United States Court of Appeals

for the Second Circuit

APPENDIX

76-7400

In The

United States Court of Appeals

For The Second Circuit

MARIAN GATEFIELD,

Plaintiff-Appellee,

vs.

ADVANCED COMPUTER TECHNIQUES CORPORATION,

Defendant-Appellant.

On Appeal from a Judgment of the United States District Court for the Southern District of New York.

UNITED STATES COURT OF APPEALS
FILED
OCT 26 1978
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX

LEWIS & DeCLEMENTE
Attorneys for Defendant-Appellant
757 Third Avenue
New York, New York 10017
(212) 421-8837

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BEST COPY AVAILABLE

DOCKET ENTRIES (pp. 1a-2a)

75 Civ. 5095 [illegible] ADVANCED COMPUTER TECHNIQUES CORPORATION

JUDGE MAC MAHON

DATE	NR.	PROCEEDINGS
		Page #1
10-16-75	1	Filed complt. and issued summons.
11-5-75		Filed summons & Marshal's return. Served: Advanced Computer Techniques By: Nina Alberti 10-21-75
11-18-75		Filed defts affdvt & notice of motion pursuant to Rule 12(a) to dismiss the complt. for lack of jurisdiction & diversity.
11-18-75		Filed defts memo in support of motion to dismiss for lack of jurisdiction.
11-20-75		Filed pltffs affdvt in opposition to defts motion to dismiss the compl
11-20-75		Filed pltffs memo in opposition to defts motion to dismiss for lack of jurisdiction.
11-21-75		Filed defts reply affdvt in support of m tion to dismiss this action for lack of jurisdiction.
11-21-75		Filed defts reply memo in support of motion to dismiss.
12-16-75		Filed Endorsement & Order on motion of 11-18-75. Deft moves, under Rule 12(b) to dismiss for lack of subject matter jurisdiction, for reasons indicated, the motion is denied.....MAC MAHON,J m/n
1-15-76		Filed deft's ANSWER to the complt & counterclaim.
1-15-76		Filed defts notice to take deposition of pltff.
3-15-76		PRE-TRIAL CONFERENCE HELD BY Judge Mac Mahon.
4-6-76		Filed affdvt of service by Diane Hall on 4-5-76, of pltffs trial brief, Statement of Facts Disputed & not Disputed & requests to charge on Lewis & DeClemente, defts atty's, by mail.
4-7-76		Filed notice that action has been added as #3 on the ready trial calendar, when reached in order, etc.....MAC MAHON,J
4-16-76		Filed Pre-Trial Order #2.....MAC MAHON,J.
4-16-76		Filed notice that Notice of pre-trial heating held & concluded 3-15-76 Jury trial begun 4-13, 76 & continued 4-14-76. Trial concluded 4-14-7 Total trial days (2). Jury verdict for pltff in am't of $10,115. Post trial motion to be submitted on paper within 10 days. Judgment stayed pending decision on motions.
4-19-76		Filed defts statement of undisputed & disputed facts.
4-19-76		Filed defts supplemental statement of undisputed & disputed facts.
4-19-76		Filed defts supplemental requests for instructions to the jury.

//////// Con't on Page #2

75 Civ 3095 GATEFIELD -v- ADVANCED COMPUTER TECHNIQUES 75 Civ

MAC MAH(

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date O Judgme
4-19-76	Filed defts supplemental requests for special interrogs to the jury.	
4-19-76	Filed pltffs trial brief.	
4-19-76	Filed deft's requests for instructions to the jury.	
4-19-76	Filed pltffs request to charge.	
4-19-76	Filed pltffs reply to counterclaim. (Filed in Court).	
4-19-76	Filed defts requests for special interrogs to the jury.	
4-19-76	Filed defts pre-trial brief.	
4-19-76	Filed defts supplemental pre-trial brief.	
4-21-76	Filed defts notice of motion for judgmentnotwithstanding the verdict or new trial, or diminution of damages. Ret. 4-23-76.	
4-21-76	Filed defts memo in support of motion.	
4-26-76	Filed deft's reply memo in support of motion for judgment notwithstanding the verdict or for a new trial, or reduction in verdict.	
6-3-76	Filed transcript of record of proceedings, dated 4-14-76	
6-3-76	Filed transcript of record of proceedings, dated Cont'd 4-14-76	
6-3-76	Filed transcript of record of proceedings, dated 4-13-76	
6-23-76	Filed Memorandum & Order #44638. Pltff brought this action for wrongful discharge in breach of an employment contract. The jury returned a verdict in favor of pltff in the am't of $10,115 following a two (2) day trial. Deft moves for judgment n.o.v. in its favor, or for a new trial, & to reduce the am't of the verdict. For the reasons indicated, defts motion for the judgment n.o.v. or for a new trial, or reduction in the am't of the verdict is denied. The Clerk of the Court is directed to enter judgment in accordance with the verdict of the jury....So Ordered, MAC MAHON,J. n/m	
4-13-76	Jury trial begun & continued.	
4-14-76	Trial concluded - Total trial days (1). Jury verdict for pltff for $10,115.	
6-25-76	Filed Judgment #76,601 & Order that pltff have judgment against deft in the am't of $10,115.....Clerk. n/m	
7-23-76	Filed deft's notice of appeal to the USCA from Judgment #76,601 ent. 6-25-76 pursuant to Memo-Dec. denying defts motion for a new trial & for judgment n.o.v., & the verdict of the jury ret. on 4-14-76, in the am't of $10,115. Copy mailed to Ralph R. Ferney, 299 Park Ave., New York, N.Y. 10017, 688-5000.	
7-23-76	Filed Supersedeas Bond in the sum of $11,477.65 - Aetna Casualty & Surety Co.	
8-30-76	Filed notice that original record on appeal has been Certified & transmitted to the USCA.	
8-30-76	Filed Stipulation designating exhibits to the USCA	

SUMMONS IN A CIVIL ACTION

SUMMONS (Filed November 5, 1975)

JUDGE MAC-MAHON

3a

CIV. 1a (2-64) (Formerly D.C. Form No.45a Rev. (6-49))

United States District Court

75 CIV. 5005

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. _____

MARIAN GATEFIELD,

Plaintiff

v.

ADVANCED COMPUTER TECHNIQUES CORPORATION,

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon Ralph R. Ferney, Esquire

plaintiff's attorney , whose address is Third Floor, 299 Park Avenue New York, New York 10017

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT,

Clerk of Court.

E.A. BECKER

Deputy Clerk.

Date: October 16, 1975

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

JUDGE MAC MAHON

CIVIL ACTION NO.

MARIAN GATEFIELD,

Plaintiff,

vs.

ADVANCED COMPUTER TECHNIQUES CORPORATION,

Defendant

COMPLAINT

1. Plaintiff is a citizen of a foreign state, to wit; The United Kingdom of Great Britain and Northern Ireland, and defendant is a corporation incorporated under the laws of the State of New York with its principal office at 437 Madison Avenue, Borough of Manhattan, City and State of New York. The matter in controvery exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

2. On or about November 1, 1972, plaintiff entered into an employment contract in writing, a copy of which is hereto annexed as Exhibit A.

3. Prior to June 2, 1975, plaintiff had fully complied with all the provisions of said employment contract.

4. On or about June 2, 1975, defendant wrongfully discharged plaintiff as an employee of defendant in violation of the provisions of said employment contract.

5. Defendant did not pay plaintiff full salary for the month of May 1975.

WHEREFORE, plaintiff demands judgment against defendant in the sum of Twenty-Thousand Dollars ($20,000.00), interest, and costs.

Dated: New York, New York
October 16, 1975

RALPH R. FERNEY
Attorney for Plaintiff
Third Floor
299 Park Avenue
New York, New York 10017
Tel: (212) 688-5000, Ext. 722

DEMAND FOR JURY

Plaintiff demands a trial by jury of all issues raised by the foregoing complaint.

Address of Plaintiff:
41 Central Park West
New York, New York 10023

Address of Defendant:
437 Madison Avenue
New York, New York 10022

EXHIBIT A - EMPLOYMENT CONTRACT ANNEXED TO FOREGOING COMPLAINT

(pp. 6a-9a)

EMPLOYMENT CONTRACT made as of November 1, 1972 between ADVANCED COMPUTER TECHNIQUES CORPORATION, a New York corporation (hereinafter referred to as "Employer") and Marian Gatefield (hereinafter referred to as "Employee");

WITNESSETH it is agreed as follows:

1. Employment:

(a) Employer hereby employs Employee and Employee hereby accepts such employment, upon the terms and conditions hereinafter set forth.

(b) Employee shall perform such duties as may be assigned to him from time to time by Employer, shall devote his entire time, attention and energies to the business of the Employer and shall faithfully perform his duties in accordance with the directions of the Employer.

2. Term:

(a) Employee's employment hereunder shall commence on November 1, 1972 and shall continue until October 31, 1977 provided that after October 31, 1975 either party shall have the right to terminate this agreement on not less than sixty (60) days written notice.

(b) In lieu of any notice required to be given by Employer hereunder in the event it terminates the agreement, Employer shall have the right to pay Employee the salary he would receive during such notice period in one lump sum, in which event this agreement will immediately terminate.

(c) Notwithstanding anything hereinbefore contained Employer shall have the right to terminate this agreement immediately at any time for cause.

3. Compensation:

For the purpose of this paragraph 3 the term "Year of the Agreement" shall mean the twelve (12) month period commencing on November 1, 1972 and on each succeeding November 1 , during the term hereof. As full compensation for all services rendered by Employee hereunder, Employer shall pay Employee the following salary:

(a) From November 1, 1972 to October 31, 1973 Employee will be paid a salary at the rate of Nineteen Thousand Dollars ($19,000) per annum;

(b) During each succeeding year of the agreement commencing with November 1, 1973 Employee's annual rate of salary shall be increased by an additional $1,500, provided that after Employee's annual rate of salary is equal to $22,000, Employee and Employer shall negotiate any further increases in Employee's salary.

4. Benefit Plans of Employer:

Employee shall be entitled to participate in all group life insurance, major medical and other employee benefit plans established by Employer in accordance with the applicable provision of such plans.

5. Assignment:

Employer shall have the right to assign this agreement to any successor to its computer applications business, whether by purchase, merger or otherwise provided that such successor shall agree to be bound by all the terms hereof which are applicable to Employer.

6. Vacation:

During the first five (5) years of his employment by Employer, whether prior to or after the date of this agreement, Employee shall be entitled each year to a two (2) week vacation; thereafter, Employee shall be entitled to a three (3) week vacation. Such vacation may be taken whenever consistent with the perofrmance of her duties hereunder.

7. Restrictive Covenant:

(a) Employee acknowledges that during the course of his employment he has and will become acquainted with the business of Employer, will have close contact with Employer's clients and their personnel and with the special requirements and programs of such clients. During the term of this agreement, and for a period of one (1) year thereafter, Employee shall not, directly or indirectly either as an individual, as an employee or member of a partnership, or an as employee, officer, director or stockholder of any corporation, solicit or accept, or advise anyone

else to solicit or accept, any business for computer application, computer software and related activities from any client, or from the personnel of any client, with whom Employee transacted any business during the time Employee was employed by Employer. All papers, memoranda, notes, reports, charts, programs, data, or other documents of any kind relating to the business of Employer or to the business of its clients shall be the sole and exclusive property of Employer and shall be turned over to the Employer upon the termination of Employee's employment. Employee hereby acknowledges that the limitations as to time herein placed on his subsequent employment or association, and the limitations on the character or nature thereof, are reasonable and fair and will not prevent or materially impair his ability to earn a livelihood.

(b) During the term of this agreement and for the one (1) year period thereafter, Employee shall not offer employment to, or advise anyone else to offer employment to, any employee of Employer, or any employee of Employer who voluntarily leaves the employ of Employer during such period.

8. Notices:

Any notice required or permitted to be given under this agreement shall be sufficient if in writing and if sent by registered mail as follows:

If to Employer:

Advanced Computer Techniques Corporation
437 Madison Avenue
New York, New York 10022

If to Employee:

Miss Marian Gatefield
41 Central Park West
Apt. 11G
New York, N.Y. 10023

9. Inventions and Discoveries:

(a) Employee shall promptly make a written disclosure to Employer of each invention, discovery of improvement, whether patentable or not, (hereinafter referred to as the "Invention") conceived or reduced to writing by the Employee during the course of Employee's employment by Employer provided that the forgoing shall not apply to inventions, discoveries or improvements not relating to Employer's business and which Employee conceived during other than Employer's normal working hours. As to each such invention, Employee shall point out the features or concepts which the Employee believes to be new or different.

(b) Employee hereby assigns to Employer, its successors and assigns, any such invention, which shall become and remain Employer's property whether or not patent applications are filed thereon. Employee shall, upon Employer's request and at Employer's expense, cause patent applications to be filed thereon in countries selected by Employer, through solicitors designated by Employer and shall assign all such applications to Employer, its successors and assigns. Employee shall give Employer and its solicitors all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments and other instruments and documents as Employer may consider necessary or appropriate to carry out the intent of this paragraph.

10. Waiver:

The failure of either party to insist, in any one or more instances upon performance of any of the terms and conditions of this contract shall not be construed as a waiver or a relinquishment of any right granted hereunder or of the future performance of any such term, covenant, or condition, but the obligations of either party with respect thereto shall continue in full force and effect.

11. Applicable Law:

This agreement shall be governed by and construed in accordance with the laws of the State of New York.

12. Entire Agreement:

This agreement contains the entire agreement of the parties with respect to the employment of Employee by Employer.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

ADVANCED COMPUTER TECHNIQUES CORPORATION

By /s/ CHARLES P. LECHT
President

/s/ MARVIN GARFIELD

NOTICE OF MOTION TO DISMISS COMPLAINT
(Filed November 18, 1975) (pp. 10a-11a)

United States District Court
Southern District of New York

Marian Gatefield,

Plaintiff,

vs.

Advanced Computer Techniques Corporation,

Defendant.

75 Civ. 5095 (LFM)

Notice of Motion
To Dismiss Complaint

Please take notice that on November 21, 1975 at Room 1305, United States Courthouse, Foley Square, New York, at 2:15 p.m., the undersigned will move this Court for an order, pursuant to Rule 12 (a) of the Federal Rules of Civil Procedure and 28 U.S.C., § 1332, to dismiss the complaint in this action because of lack of jurisdiction, including lack of diversity.

Please take further notice that, pursuant to Rule 9 of the General Rules of this Court, all opposing affidavits and memoranda, if any, are required to be served upon the

undersigned on or before November 18, 1975.

Dated: New York, N. Y.
November 7, 1975

Lewis & De Clemente

By _____
Attorneys for Defendant
Advanced Computer Techniques
Corporation
757 Third Avenue
New York, New York
(212) 421-8837

To: Ralph R. Ferney, Esq.
299 Park Avenue
New York, New York 10017

AFFIDAVIT OF OSCAR SCHACHTER IN OPPOSITION TO MOTION TO DISMISS COMPLAINT (pp. 12a-15a)

United States District Court
Southern District of New York

Marian Gatefield,

Plaintiff,

vs.

Advanced Computer Techniques Corporation,

Defendant.

75 Civ. 5095 (LFM)

Affidavit In Support Of Defendant's Motion

State of New York)
: ss.
County of New York)

Oscar H. Schachter, being duly sworn, deposes and says:

I am Executive Vice President of the defendant, Advanced Computer Techniques Corporation ("ACT"). I am personally familiar with all the facts hereafter set forth in this affidavit. This affidavit is submitted in support of ACT's Motion, pursuant to Rule 12 (a) of the Federal Rules of Civil Practice, and 28 U.S.C. § 1332, to dismiss this action because:

A. The Amount In Controversy Is Less Than $10,000.

The amount Ms. Gatefield seeks, viewed in its most favorable light, cannot exceed $10,000, exclusive of costs and interest. At the time Ms. Gatefield left our employ, she was earning $23,000 per annum, or $1,916.67 per month.

In May, 1975, Ms. Gatefield had requested the company to grant her a leave of absence. I, and Mr. Lecht objected to the time in which she was planning to go on leave. Assuming that Ms. Gatefield is correct, which we strenuously deny, she can recover no more than the salary for the balance of the year under the alleged contract, less the two months she claims she was entitled to take for a leave of absence.

Indeed, her attorney wrote to Mr. Lecht on August 5, 1975, admitting that the salary for the two month leave of absence had to be deducted from any claim on her behalf (see Exhibit 1).

The total amount of money due to Ms. Gatefield, should she be successful in this action, would be $9,583, an amount that is less than the jurisdictional amount set forth in 28 U.S.C. § 1332.

B. There Is No Diversity of Citizenship Between The Parties.

In order to prosecute this action in the federal court, it is necessary for the plaintiff to demonstrate the existence of diversity of citizenship between the parties. That diversity is lacking here because Ms. Gatefield is a resident of New York, and ACT is a corporation whose principal place of business is in New York.

Until June of this year, Ms. Gatefield had worked in the steady employment of this company, and, throughout that period of time, reported to the company that she was residing in New York City. It is my understanding that she is still residing in this city. In any event, Ms. Gatefield has admitted residency in her complaint, which specifically recites her address to be 41 Central Park West, New York, New York.

In view of the fact that Ms. Gatefield is, and has been, for a number of years, a resident and domiciliary of this state, there is lacking the necessary diversity of citizenship required by 28 U.S.C. § 1332.

Conclusion

The complaint should be dismissed because this Court has no jurisdiction over the action, since there is lacking any diversity of citizenship between the parties, and the requisite amount in controversy. For such reasons, defendant respectfully requests that this Court dismiss the action, with costs to defendant.

Sworn to before me this
7 day of November, 1975

Notary Public
State of New York, No. 31-4526714
Qualified in New York County
Commission Expires March 30, 1976

AFFIDAVIT OF MARIAN GATEFIELD IN OPPOSITION TO MOTION

United States District Court
Southern District of New York

(pp. 16a-19a)

Marian Gatefield,
Plaintiff,

vs.

Advanced Computer Techniques Corporation,
Defendant.

75 Civ. 5095 (LFM)

Affidavit In Opposition to Defendant's Motion To Dismiss Complaint

State of New York)
ss.
County of New York)

Marian Gatefield, being duly sworn, deposes and says:

1. I am the plaintiff in this action. I am personally familiar with all the facts set forth in this affidavit which is submitted in opposition to defendant's motion pursuant to Rule 12(a) of the Federal Rules of Civil Practice, and 28 U.S.C. § 1332, to dismiss this action for lack of jurisdiction because (a) the amount in controversy is less than $10,000; and (b) there is no diversity of citizenship.

2. I am a citizen of the United Kingdom of Great Britain and Northern Ireland. I am the daughter of British citizens and was born in Slough, Buckinghamshire, England on March 22, 1943.

3. I began to reside in the United States in New York City in October 1966 with a permanent visa entitling me to work in the United States, and have continued to reside in New York City since that time. However, at no time have I either renounced by British citizenship or applied for American citizenship. My Alien Registration Receipt Card ("Green Card"), which I am required to have on my possession at all times, states that

my Registration Number is A-14833292. My British Passport Number is 799889. Although I continue to reside in New York City, I do not intend to reside here permanently.

4. From October 1966 until March 1969, I was employed by Computer Applications Limited in New York City. In March 1969, I became an employee of defendant, a New York corporation, in New York City. Effective November 1, 1972, my employment for defendant was under the Employment Contract of same date which is attached as Exhibit A to the Complaint in this action.

5. I had several salary increases while an employee of defendant, and on or about the first week of May 1975, I was advised by defendant's President, Charles P. Lecht, that my salary would be increased from $23,000 per annum to $25,500 per annum effective May 16, 1975. Notwithstanding this, the wages paid to me for the last half of May 1975 were based on a $23,000 annual salary.

6. Early in April 1975, I applied for, and was given permission by the Executive Vice President of defendant, Mr. Oscar Schachter, to take a two-month's leave of absence from June 1, 1975 through July 31, 1975. I advised Mr. Lecht when I commenced my leave to go to visit my family in England that, should anything come up in my absence of an emergency nature, he should contact me. While I was in England visiting my family, I received a letter from Mr. Lecht dated June 2, 1975 advising that my employment with defendant was terminated, effective immediately. This was in violation of my employment agreement which required that defendant continue to employ me at least through December 1975.

7. I have incurred from June 2, 1975 to date the following expenses, all of which are a direct result of my wrongful discharge in violation of my employment agreement with defendant, and which constitute the expenses of being advised of my rights and attempting to find suitable employment:

Extra Air Travel to New York City from England (I received a discount in fare)	$ 175.00
Approximation of cost of phone calls, stationery, typewriter rental, telephone answering machine, entertainment, travel expenses and extra medical insurance premiums	710.00
Unpaid expense report and property not returned by defendant	350.00
TOTAL	$1,235.00

In making the above list, I do not intend to waive my rights to other expenses which out of ignorance of my rights or inadvertance I have not included at this time. Also, I expect to incur additional expenses in the future.

8. My seniority as an employee with defendant entitled me to three weeks of paid vacation, none of which had been taken at the time of my wrongful discharge. This constitutes additional damages of $1,471 (3/52 of $25,000).

9. I have no reason to expect that I will obtain gainful employment between now and January 1, 1976, although I have attempted to do so and will continue to do so.

10. I authorized my attorney to send the letter attached as Exhibit 1 to the affidavit (which I have read) by Mr. Schachter in support of the motion to dismiss this action. It was intended as an offer of compromise to avoid litigation and not as a statement of the maximum amount of damages which I would claim in the event litigation had to be commenced.

11. I am advised that the minimum damages which I should collect from defendant in this suit is $17,685, outlined as follows:

a.	$25,500 annual salary from June 1, 1975 through December 31, 1975	$ 14,875
b.	Failure to pay 1/2 May salary in full	104
c.	Other expenses to date as per Section 7 of this affidavit	1,235
d.	Vacation pay	1,471
	TOTAL	$ 17,685

CONCLUSION

12. The above facts make it clear that the amount in controversy exceeds $10,000.00 and that I am a citizen of the United Kingdom whereas defendant is a citizen of New York; wherefore, defendant's motion to dismiss on the grounds that the requisite amount in controversy and the diversity of citizenship required by 28 U.S.C. § 1332 is lacking should be denied.

Marian Gatefield

Sworn to before me this
14th day of November, 1975

Notary Public

ANNE J. EXLINE
NOTARY PUBLIC, State of New York
No. 31-1145625
Qualified in New York County
Commission Expires March 30, 1974

AFFIDAVIT OF CHARLES P. LECHT
(pp. 20a-23a)

United States District Court
Southern District of New York

Marian Gatefield, Plaintiff,	:	
vs.	:	75 Civ. 5095 (LFM)
Advanced Computer Techniques Corporation, Defendant.	:	Affidavit

State of New York)
: ss.:
County of New York)

Charles P. Lecht, being duly sworn, deposes and says:

I am president of Advanced Computer Techniques Corporation ("ACT") and am fully familiar with all of the facts set forth in this affidavit. I submit this reply affidavit in support of defendant's motion under Rule 12A of the Federal Rules of Civil Practice to dismiss this action for lack of jurisdiction.

I have reviewed the affidavit of Ms. Gatefield, the plaintiff in the above entitled action. The statement concerning salary increases purportedly promised to her in 1975, is in error. Salary increases were discussed based upon continued performance, but none were settled upon. At no time was her salary increased from the $23,000 amount she was receiving, nor do our books show that such increase was ever implemented. By her own admission, the wages paid to her for the last half of May, 1975 continued to be based on a $23,000 annual salary.

When she received these wages, she made no statement disputing the amount paid, and not until receipt of a letter from her attorney was this company on notice of her claim for additional compensation.

I further adopt all of the statements made by Oscar Schachter, Executive Vice President of this firm, made in his affidavit in support of the motion dated November 7, 1975. His affidavit set forth that Ms. Gatefield was never given permission by the company or any other representatives to take a two-month leave of absence during the period which she requested. On the contrary, Mr. Schachter and I both

specifically advised her that her plans were in conflict with her duties and this firm's obligations to its clients. These statements by Mr. Schachter are barely contested by the plaintiff.

It is our opinion and the opinion of experts in the computer industry, including Mr. D. H. Brandon, a well-known authority in personnel requirements in the computer field, that Ms. Gatefield could have obtained employment shortly after her severance from this company. Ms. Gatefield's competence in her professional skills was not in question. She has had six years of intensive experience with ACT on numerous projects involving sophisticated programming, systems design and analytical requirements. It is highly doubtful that she has exerted efforts to obtain new employment. I have been told by persons with whom Ms. Gatefield has had contact since June 1975, that she did not intend to seek a position immediately after her discharge, but to wait until a time when she was ready to do so.

S/ Charles P. Light

Sworn to before me this
20 day of June 1975

S/ Karel Hewitt
Notary Public
State of New York, No. 31-4526714
Qualified in New York County
Commission Expires March 30, 1976

State of New York)
: ss.
County of New York)

Herbert Klitzner, being duly sworn, deposes and says: that deponent is not a party to the action, is over 18 years of age and that on the 20th day of November, 1975, deponent served the within affidavit on

Ralph Ferney, Esq.
299 Park Avenue
New York, N.Y.

at the address designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed envelope in an official depository under the exclusive care and custody of the United States post office department.

S/ Herbert Klitzner

Sworn to before me this
20 day of November 1975

Notary Public
State of New York, No. 31-4526714
Qualified in New York County
Commission Expires March 30, 1976

DEFENDANT'S ANSWER AND COUNTERCLAIM (Filed January 15, 1976)
(pp. 24a-33a)

United States District Court
Southern District of New York

Marian Gatefield,

Plaintiff,

vs.

Advanced Computer Techniques Corporation,

Defendant.

75 Civ. 5095 (LFM)

Answer and Counterclaim

Defendant, Advanced Computer Techniques Corporation, denies each and every allegation set forth in the Complaint, except as specifically admitted or otherwise answered, as follows:

1. Paragraph	Response
1	Defendant is without information sufficient to form an opinion or belief as to the truth or falsity of this allegation, except to admit that defendant is a corporation with its principal place of business at 437 Madison Avenue, New York, New York, and to deny that the matter in

controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars ($10,000).

First Affirmative Defense

2. The complaint fails to state a claim against defendant upon which relief can be granted.

Second Affirmative Defense

3. Plaintiff never entered into an employment contract with defendant.

4. Accordingly, defendant was free to terminate plaintiff at will and for any reason without any obligation for payment of compensation over and above compensation that plaintiff had earned prior to termination.

Third Affirmative Defense

5. Plaintiff never entered into any written

employment contract with defendant.

6. The contract, as alleged, is null and void and unenforcible, being in violation of the Statute of Frauds.

Fourth Affirmative Defense

7. Plaintiff absented herself from defendant's employ without authorization.

8. Plaintiff refused to carry out the duties and responsibilities of her position with defendant.

9. Plaintiff's discharge was justified because plaintiff did not perform her work satisfactorily or in compliance with defendant's instructions and directions and, instead, acted directly in contravention of defendant's instructions and directions.

Fifth Affirmative Defense

10. This Court lacks jurisdiction because there

is no diversity between the parties.

Sixth Affirmative Defense

11. This Court lacks jurisdiction because the amount in controversy does not exceed $10,000, exclusive of interest and costs.

Seventh Affirmative Defense

12. Plaintiff had reasonable opportunity to obtain employment at a comparable or higher rate of compensation as with defendant.

13. Plaintiff made no effort to obtain employment following her dismissal, and having failed to meet her obligation to mitigate any damages she alleges she suffered, is entitled to no recovery.

Couhterclaim

First Count

1. Plaintiff was engaged by defendant as a systems analyst [and [as a marketing representative] for the defendant, a computer software and systems analysis company.

2. Among other functions, plaintiff was specifically given responsibility for soliciting potential clients and servicing such clients, whose offices were located at the Port of New York and New Jersey Authority, World Trade Center in New York City.

3. Defendant had invested considerable sums in developing good will with the Port of New York and New Jersey Authority and the World Trade Center, and in the training and employment of plaintiff, with the expectation and on reliance that the investment would result in the retention of clients whose offices were located at the Center.

4. Defendant informed plaintiff, and plaintiff understood, that she was to be on call to work on any emergency

matters that developed for the defendant, in addition to her duties at the World Trade Center.

5. Such an emergency occurred, beginning in April, 1975, when defendant undertook a large project with First National City Bank to write specifications for their money management system (COINS).

6. The COINS project drained a large part of defendant's staff, particularly in the initial months (April to July, 1975), in which the project was under way.

7. Accordingly, systems analysts on defendant's staff engaged in other projects had to be called in to work on the COINS project on a temporary basis.

8. Defendant had directed plaintiff to work temporarily on the COINS project, but plaintiff left defendant's employment on or about May 30, 1975, without authority and in conflict with, and without concern for her required duties, and was unavailable for assignment to the project and did refuse to participate in such project thereafter.

9. Plaintiff's actions were deliberate and malicious and designed to injure and impair defendant's business, and its business opportunities.

10. Defendant has suffered substantial damages because of plaintiff's acts.

Second Count

11. Defendant repeats and realleges paragraphs 1 through 10 of this Counterclaim, as if set forth herein.

12. Assuming [plaintiff had executed an employment contract with defendant] as alleged in plaintiff's complaint, plaintiff breached said alleged contract

13. The alleged contract provides, inter alia, that plaintiff shall perform such duties as may be assigned by defendant, shall devote her entire time, attention and energies to the defendant's business and shall faithfully perform plaintiff's duties in accordance with defendant's directions.

14. In refusing to continue her work at the World Trade Center, and refusing to work on defendant's COINS project, and in absenting herself from the company while these and other assignments were in effect, plaintiff acted contrary to and in breach of the obligations of her alleged contract with defendant, and in direct contravention of defendant's instructions and directions, and thereby damaged defendant's then current operations and prejudiced defendant's business opportunities.

Third Count

15. Defendant repeats and realleges paragraphs 1 through 14 of this Counterclaim, as if set forth herein.

16. Plaintiff undertook to perform duties for defendant for compensation, and to perform those duties faithfully, to comply with defendant's instructions and directions, and to devote her time, attention and energies to defendant's business.

17. Plaintiff failed to live up to her responsibilities and obligations under her agreement with defendant by

absenting herself from the company without authorization and in dereliction of her duties.

18. As a result, plaintiff damaged defendant's then current operations and prejudiced defendant's business opportunities.

Wherefore, defendant seeks judgment against plaintiff and in favor of defendant in an amount of not less than $60,000, plus the costs of this action, and interest.

Dated: New York, New York
January 2, 1976

Lewis & DeClemente
Attorneys for Defendant
757 Third Avenue
New York, New York 10017
(212) 421-8837

by: _____
(a member of the firm)

To: Ralph Ferney, Esq.
Attorney for Plaintiff
299 Park Avenue
New York, New York 10017

State of New York) ss:
County of New York)

Linda Dickinson, being duly sworn,

says:

That she is over the age of twenty-one years. That on the 5th day of Jan. 1976, she served a true copy of the within Answer and Counterclaim on Ralph Ferney, Esq. the attorney for the plaintiff herein, by depositing the same, properly enclosed in a securely sealed post-paid wrapper, in a United States Post Office box directed to said attorney as follows:

Ralph Ferney, Esq.
299 Park Avenue
New York, New York 10017

that being the place where he keeps an office for the regular transaction of business, and the last address mentioned in the papers last served by

Sworn to before me this 5
day of January 1976

Linda Dickinson

PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIM
(Filed April 19, 1976) (pp. 34a-36a)

United States District Court
Southern District of New York

Marian Gatefield,
Plaintiff,

vs.

Advanced Computer Techniques Corporation,
Defendant.

75 Civ. 5095 (LFM)

Reply to Defendant's Counterclaim

Plaintiff, Marian Gatefield, denies each and every allegation set forth in the Counterclaim of defendant, except as follows:

1. As to Paragraphs 1, 2, 11 and 15, plaintiff admits she was employed by defendant corporation, a computer software and systems analysis company, as a systems analyst, and acted as the director of the World Trade Center Project for defendant but denies all other allegations in such Paragraphs except as set forth in Paragraph 2 of this Reply.
2. As to Paragraphs 12, 13 and 15, plaintiff admits that she entered into an employment contract in writing with defendant, a copy of which is annexed as Exhibit A to the Complaint, but denies all other allegations in such Paragraphs, except as set forth in Paragraph 1 of this Reply.

First Affirmative Defense

3. All three counts of the Counterclaim fail to state a claim against plaintiff upon which relief can be granted.

Second Affirmative Defense

4. Plaintiff and defendant entered into a written employment contract the provisions of which were complied with by plaintiff and breached by Defendant; accordingly, defendant is not entitled to recover under any of the three counts of its Counterclaim.

Third Affirmative Defense

5. If defendant suffered any damages as a result of or following its termination of plaintiff's employment, it was because defendant had wrongfully discharged plaintiff in violation of a written employment agreement; accordingly, no relief is obtainable under any of the three counts of the Counterclaim.

Fourth Affirmative Defense

6. If defendant suffered any damages due to or in any way related to the dismissal of plaintiff from her employment with defendant, it was because of defendant's willful decision to terminate plaintiff's employment.

Fifth Affirmative Defense

7. Defendant is guilty of laches and is estopped from asserting any of the three counts of the Counterclaim.

Sixth Affirmative Defense

8. If plaintiff committed any wrongful acts alleged in the Counterclaim, they were consented to and condoned by defendant.

Seventh Affirmative Defen

9. If defendant suffered damages, having any causal relationship with the nonperformance of duties by plaintiff or her termination of employment, it was due to the primary negligence of defendant in its failure to exercise due care and good business judgment to prevent such damages.

Eighth Affirmative Defense

10. If defendant suffered damages following or in any way related to the termination of plaintiff's employment, it was primarily due to intervening events beyond plaintiff's reasonable control.

Ninth Affirmative Defense

11. Upon information and belief, the laws of the State of New York and the By-laws of defendant, a corporation organized under the laws of the State of New York, require that plaintiff be indemnified for any suit by defendant against plaintiff arising out of such employment other than willful misconduct; therefore, defendant cannot recover under the second and third counts of its Counterclaim.

WHEREFORE, plaintiff seeks judgment against defendant and in favor of plaintiff to dismiss the Counterclaim of defendant, plus the costs of defending against the Counterclaim, and judgment as prayed for in the Complaint.

Dated: New York, New York
January 26, 1976

By Ralph R. Ferney

Ralph R. Ferney
Attorney for Plaintiff
299 Park Avenue
Third Floor
New York, New York 10017
(212) 688 3660

To: Lewis & DeClemente
Attorneys for Defendant
757 Third Avenue
New York, New York 10017

SOUTHERN DISTRICT OF NEW YORK

PRE-TRIAL ORDER # 2 OF MAC MAHON, J. (Filed April 16, 1976) 37a

Marian Satefull :

Plaintiff(s), :

-against- :

A. C. T :

Defendant(s). :

PRE-TRIAL ORDER NO. 2

75 Civ. 5095 (LFM)

Jury

The parties to this action, by their attorneys, having appeared before this court at a pre-trial conference on 3-15, 1976, pursuant to Rule 16 of the Federal Rules of Civil Procedure, it is hereby stipulated and ordered that:

(1) The parties shall complete all discovery and inspection by April 12, 1976.

(2) The parties shall, in order to prevent delay or interruption of the trial or other delay or failure of justice, have sufficient witnesses available in the courtroom at all times during the trial, and shall perpetuate by deposition the testimony, on direct and cross-examination, of any essential witness, including physicians and other experts.

(3) The parties shall submit trial briefs, a statement of facts not disputed and of facts disputed, and, if a jury trial, requests to charge on or before April 5, 1976. of 10 pages

(4) The parties shall, in advance of trial, mark for identification all exhibits which they intend to use upon the trial, with the plaintiff(s) using numbers and the defendant(s) using letters.

(5) This action shall be added to the reserve trial calendar on or after April 12, 1976, and thereafter counsel are obliged to watch the New York Law Journal for publication of this action on this court's ready trial calendar. Once published in the New York Law Journal, all parties must be ready to proceed to trial on short telephonic notice. Adjournments of the trial will not be granted except upon a showing of good cause arising after publication on the ready trial calendar.

(6) _____ shall move by _____, 197 for an order _____.

_____ shall settle an order within ten (10) days in accordance with this court's rulings on _____ motion for _____.

This action is referred to _____ for _____.

(7) It shall be the responsibility of the parties and their attorneys now of record to bring this order to the attention of trial counsel and any other attorney who is now, or may hereafter be, involved in this litigation.

(8) Failure to comply with any of the provisions of this order may result in the court's taking appropriate steps to terminate the action.

Dated: New York, N. Y.
3-15, 1976

Ralph R. Ferrey
Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

SO ORDERED:
Lloyd F. MacMahon
LLOYD F. MacMAHON
United States District Judge

BEST COPY AVAILABLE

TRANSCRIPT OF PROCEEDINGS BEFORE HON. LLOYD F. MAC MAHON ON APRIL 13, 14, 1976

ars

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MARIAN GATEFIELD, Plaintiff,	:	
vs.	:	75 Civil 5095 (LFM)
ADVANCED COMPUTER TECHNIQUES CORPORATION, Defendant.	:	

Before;

HON. LLOYD F. MacMAHON,
District Judge.

New York, April 13, 1976;
10.00 o'clock a.m.
(Room 501)

APPEARANCES:

RALPH R. FERNEY, Esq.,
Attorney for Plaintiff.

LEWIS & DeCLEMENTE, Esqs.,
Attorneys for Defendant;
BY: PAUL LEWIS, Esq., of Counsel.

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(A jury of six and one alternate were duly impaneled and sworn.)

(Mr. Ferney made an opening statement on behalf of the plaintiff.)

(Mr. Lewis made an opening statement on behalf of the defendant.)

THE COURT: Proceed.

MR. FERNEY: Marian Gatefield.

- -

M A R I A N G A T E F I E L D , the plaintiff, called as a witness in her own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FERNEY:

Q Miss Gatefield, what is your present address?

A 41 Central Park West, New York.

Q Are you a citisen of the United States of America?

A No, I am not.

Q Are you a citizen of any country?

A I am a citizen of the United Kingdom of Great Britain and Northern Ireland.

Q Do you have any documentary proof of your British citizenship?

A Yes, I have a British passport.

Q I hand you a document marked as Exhibit 1 for identification.

Is this the passport issued to you by the British Government?

A Yes, it was.

MR. FERNEY: Your Honor, I would like to introduce this into evidence.

THE COURT: Received.

(Plaintiff's Exhibit 1 for identification was received in evidence.)

xx Q Do you have a visa issued by the United States Government permitting you to have residence in the United States of America?

A Yes, I have a permanent resident visa.

Q Do you have any documentary proof of this visa?

A I have a residence alien receipt card.

Q I hand you a document marked as Plaintiff's Exhibit 2 for identification.

Is this card yours?

MR. FERNEY: I introduce this document into evidence.

THE COURT: Received.

xx (Plaintiff's Exhibit 2 for identification

was received in evidence.)

Q Where were you born, Miss Gatefield?

A In South Birmingham, Hampshire, England.

Q Do you have a college education?

A Yes, I do.

Q Where did you attend college?

A Portsmouth College of Advanced Technology, England.

Q What did you major in?

A Mathematics and physics.

Q What year did you graduate from college?

A 1964.

Q Upon completion of your college education were you employed by any employer?

A Yes, I was employed by Honeywell, Inc., in London.

Q How long did you work for Honeywell?

A I worked for them from November 1974 until September of 1976.

Q What happened after you finished your employment with Honeywell?

A I joined a corporation here in New York called Computer Applications, Inc. of 555 Madison Avenue.

Q What was your occupation with Honeywell and I

believe CAI, is that correct?

A Yes. Honeywell I was a trainee programmer and then I became a programming instructor, instructing clients' personnel in the use of Honeywell computers.

At Computer Applications, Inc. I was a systems analyst programmer.

Q Will you explain what a systems analyst programmer is?

A A systems analyst programmer is a person who prepares specifications for a computer system through our interaction with a potential user who for example in a payroll department would like to automate their payroll processing so we analyze interactions with the user's specifications, what the user wants translated into the computer specifications and is responsible for the estimating of how long this translation into specifications and the implementation of the systems and the translation of the specifications into computer programs and then testing and running of the computer program and estimating how long these phases will last and the cost of such; the implementation of the system and the running of the system.

Q How long did you work for CAI?

A I worked from October 1966 until February 1969.

Q Then were you employed by another company?

A Yes, I was employed by Advanced Computer Techniques, ACT at 437 Madison Avenue.

Q Is that the defendant corporation in this action?

A Yes, it is.

THE COURT: When did you start work for ACT?

THE WITNESS: In March 1969; February, March, 1969.

Q What kind of work did you do for ACT initially?

A I was a systems analyst and programmer.

Q Who did you report to?

A Initially I reported to Mr. William Hardin who was a vice-president and who hired me.

Q What were Mr. Hardin's more specific duties?

A He was manager of the New York location, the whole of the New York office.

Q Did you continue to work for Mr. or report to Mr. Hardin throughout your employment or did that change?

A No, that changed. Mr. Hardin left the company and then I was assigned to the World Trade Center project and from that point on I reported directly to the president of the corporation, Charles Lecht.

Q Will you spell that?

A L-e-c-h-t.

Q Had you known Mr. Lecht before this?

A Yes.

Q Excuse me, when did this change occur, when did you begin to report to Mr. Lecht?

A At the end of 1970, beginning of 1971. I am not absolutely sure of the dates.

Q You said something about the New York World Trade Center project. Will you explain that a little more?

A ACT was the computer consulting corporation to the New York World Trade Center and I was responsible for interacting with the World Trade Center personnel and for the management of any projects that the World Trade Center awarded us.

Q How long while you were at ACT after you began to work and report to Mr. Lecht did you continue to report to Mr. Lecht, the president?

A Throughout my employment at ACT except for particular times when I was asked to work on other projects, other technical projects and for the duration of those I reported to the project leader but still to Mr. Lecht.

Q When you reported to Mr. Lecht what were your primary duties?

A The New York World Trade Center.

Q At some point in time did you enter into a written contract with ACT?

A Yes.

MR. LEWIS: Objection, your Honor.

THE COURT: Sustained.

Do you have the written document?

MR. FERNEY: Yes, sir.

THE COURT: I suggest you proceed by using it.

Q I hand you a document marked as Exhibit 3. I ask you to look at this document. I will read fro the benefit of the jury the initial paragraph.

THE COURT: No, not until it is in evidence.

MR. FERNEY: All right, your HOnor.

2 Q Please read the document and investigate it.

On the last page of the document are there any signatures?

A There are two signatures.

Q Whose signatures are they, if you know?

A Charlie Lecht and my own.

Q Above the name Charlie Lecht as you put it is there any other language?

A Advanced Computer Techniques Corporation.

Q The line under that?

A President.

MR. FERNEY: Your Honor, I introduce this into evidence.

THE COURT: Received.

(Plaintiff's Exhibit 3 for identification was received in evidence.)

xx Q Will you tell the jury the circumstances surrounding the events whereby you signed this contract?

A In October 1972 Mr. Lecht and I had a discussion concerning my annual review and at that point he informed me that he would like to offer me an employment contract with the corporation and gave me a raise at that time from 17,200 to $19,000 and explained the terms of the contract and the length, the duration of the contract.

Q Did you sign it at that time?

A No, I did not. There was no contract furnished.

Q You did sign this contract?

A Yes.

Q When?

A I was furnished with a contract approximately a year later after Mr. Lecht and I had discussed my next annual review.

He asked me the terms of my contract and I told

him the terms and he said, "Have you signed it yet?"

I said, "No, because I had not been furnished with one by Mr. Schachter."

Whereupon Mr. Schachter did furnish me with a contract signed.

THE COURT: When you say a year later what time do you mean?

THE WITNESS: This was now November 1973.

THE COURT: 1973?

THE WITNESS: Yes.

THE COURT: I notice in the document Exhibit 3 the date November 1, 1972.

THE WITNESS: Yes, your Honor. The contract was entered into verbally when we discussed the contract in 1972. However, I was not given a document.

THE COURT: When was the conversation in 1972?

THE WITNESS: It was in the fall when Mr. Lecht and I were discussing my annual increase in salary.

THE COURT: Would that be October or November?

THE WITNESS: October or November.

THE COURT: What did he say and what did you say?

THE WITNESS: He said that he was giving me an increase in salary of $1800 which would bring my salary

to $19,000.

And that he was offering me an employment contract with ATC for five years duration.

THE COURT: What did you say?

THE WITNESS: I said I accepted after he had explained to me the terms of the contract.

THE COURT: What terms did he explain?

THE WITNESS: The initial salary would be $19,000 and the annual increase would be $1500 per annum but could be more if he felt I had performed well during the year.

And that it was non-cancelable for three years and then each party had to give the other party 60 days notice.

THE COURT: Three years?

THE WITNESS: Five years contract non-cancelable for the first three years.

THE COURT: All oral, nothing in writing?

THE WITNESS: Nothing in writing.

BY MR. FERNEY:

Q But you just testified that about a year later you did sign this document?

A Yes.

Q In describing the events you mentioned a Mr.

Oscar Schachter. Is Mr. Schachter in the courtroom?

A Yes, Mr. Schachter is on Mr. Lewis' left.

Q What was Mr. Schachter's position?

A Mr. Schachter is and was at that time executive vice-president of ATC.

Q Did he have any other duties other than being executive vice-president?

A He was acting president of the corporation in Mr. Lecht's absence.

Q How do you know that?

A Mr. Lecht announced that to the members of the corporation at numerous stock meetings.

Q When Mr. Lecht was present in the New York office, what were Mr. Schachter's general duties?

A Legal and financial matters concerning ACT.

Q Is he an attorney?

A I believe so.

Q State again please approximately when you signed this contract?

A Approximately November 1973.

THE COURT: What did you do after you signed it?

THE WITNESS: There were two copies. One copy was returned to Mr. Schachter and one copy I kept.

Q I ask you to look at the four pages -- first let

me ask you, are you familiar or were you or are you now familiar with the signature of Mr. Lecht?

A Yes, I am.

Q Is this Mr. Lecht's signature?

THE COURT: She already identified it.

MR. FERNEY: I thought she only identified the name.

THE COURT: Perhaps you are right, I am sorry.

A I believe it is Mr. Lecht's signature.

Q Did Mr. Lecht sign it in your presence?

A I can't remember if he did or not. I don't think so.

I think it was delivered to me by Mr. Schachter already signed.

Q After the contract was signed and you had given one copy to Mr. Schachter, did you have any other conversations concerning the existence of this contract?

A Yes. In the fall of 1974 Mr. Schachter came to me with a copy of the contract, an unsigned copy, and asked me if I had my copy of the original and I said yes, it was at home and he said he had misplaced his copy and would I please look for mine and sign the second copy.

Q Did you do as he requested?

A No, forgot all about it.

Q Would you give us as best you can remember a summary of your salary while you were at ACT?

A I joined ACT at a salary of $13,000. In the first two years I received two further increases of $1000 each.

Then each year I received $1000 increase until 1972 when I was given a $1800 increase.

In 1973 I received $1500 increase, bringing my salary to $20,500.

And in 1974 I was given a $2500 increase, bringing my salary to $23,000.

And in May of 1975 I was given a $2500 increase, bringing my salary to $25,500.

Q What was the precise date as best you remember of the 1974 increase in salary?

A The middle, middle of October or beginning of November -- I am sorry -- September, 1974.

Q In 1975 did you have any conversations with employees of ACT concerning a leave of absence?

A Yes. I discussed my leave of absence with --

Q Excuse me, I just asked yes or no?

A Yes.

Q When was the first time you had any such conversation and with whom was this conversation?

A Can I ask a question, clarify the question at ACT --

Q When did you first have a conversation in 1957 with someone at ACT and when was it and with whom was it?

THE COURT: Concerning a leave of absence.

A My first conversation concerning a leave of absence was with Oscar Schachter on April 4 or April 7.

Q Was the meeting called by him or was it called by you?

A The meeting was called by him.

Q What did he say to you during the course of this conversation? What were his initial remarks?

A He mentioned to me that ACT had been awarded a contract with the First National City Bank for the design of the coin system which Mr. Lewis mentioned earlier.

This was the automation of the money market trading, corporate fund money managing.

He explained to me that there were some difficulties in starting the project and asked me if I would be willing to help out and work on the project for the first phase of ACT's involvement, which was the design overview.

Q What did you say if anything in response to that?

A I said I would be perfectly willing to help out on this project because at that particular time my duties for the World Trade Center project were not particularly pressing and that I was planning on, would like to take a leave of absence beginning May 23rd, 1975 but this was after the design overview phase would have been completed.

Q What did he say in response to that?

A He agreed that I could go on leave of absence and was obviously pleased that I had agreed to work on the project.

MR. LEWIS: Your Honor, I move to strike the last part of that answer.

THE WITNESS: Yes, strike it out.

Q Did he say that he was pleased?

A He seemed -- he did not specifically say but he seemed relieved that I had agreed to work on the project because --

THE COURT: Strike it out.

What did he say if anything?

THE WITNESS: I don't remember precisely.

THE COURT: Did he say it was all right to take

the leave?

THE WITNESS: Yes, he did.

THE COURT: Did you say how long the leave was to be for?

THE WITNESS: Yes, I told him it would be for approximately two months, until the end of July.

Q You reported to Mr. Lecht at that time. Why didn't you ask him for the leave of absence?

MR. LEWIS: Objection.

THE COURT: Sustained.

Q Was Mr. Lecht available at that time to discuss the leave of absence?

A No, he was not. Mr. Lecht was working in Iran at that time and in his absence Mr. Schachter was acting as president of ACT.

MR. LEWIS: Your Honor, I would move to strike that too, what she understood and what he was doing.

THE COURT: I think that is all right. Surely she ought to know who was running the show.

Q Did you have on or about say April 4 or 7, did you have conversations at that same approximate time with other people at ACT concerning the leave of absence?

A Yes, I did.

Q With whom were those conversations?

A With Anna Tipton and Mark Messinger.

Q Who was Anna Tipton, her job at that time at ACT?

A She was at that time manager, general manager of the New York office, a division within the New York location.

Mark Messinger was the project manager for the First National -- an ACT employee but project manager for the First National City Bank Coins project that ACT had just been awarded.

THE COURT: Was he in charge of the project?

THE WITNESS: Yes, he was.

Q Did you ask them for permission for a leave of absence?

A No, I did not ask them. I discussed it with them.

Q Did you advise them that you were planning to take a leave of absence?

A Yes, I did.

Q Did they have any comment on it and if so what?

A They just asked when the leave of absence was to take place. I informed them of the dates and I would have completed my commitment to the Coins project by that time.

Q Did they voice any objection to the leave of absence?

A None.

Q Did you work on the Coins project as you had been requested?

A Yes, I did.

Q Until when did you work on the Coins project?

A I worked on the Coins project through May 30, 1975.

Q How many other computer systems analysts or programmers worked on the Coins project during that period of time?

A Mr. Messinger the project leader, two part-time people, Ralph Stout and Tom Gebsttel and three other full-time ACT employes in New York, Mark Fedders and --

THE COURT: How many all tog ether?

THE WITNESS: Five full-time, two part-time.

Q I know it may be complicated but what were your duties in the project in as simple language as possible for us to understand?

A My duties in the project were to be involved in the design overview phase and specifically in the specifications and naming of the items of information which would be handled by this money management system.

I isolated all the individual items that would be needed for a program for trading money so it would be the trade name of what kind of money instrument we were trading, such as a certificate of deposit, the amount traded, the date of the trade, to isolate all these elements of information and to cross match all of the links between these items. That was what we were doing in the first phase.

Q Would you explain using the specific phases -- I think you said the design overview phase was a phase you were working on. Would you help us out with that?

What were the various phases of the project such as this that were specifically in this particular project?

A The Coins project: The first phase had been the functional specifications. This had been accomplished by the First National City Bank employees when they specified in their terms what they wanted the system to be able to do.

Then ACT was awarded the contract to design a computer system to accomplish these requirements.

The first general design was called design overview in which we took the overall picture and mapped out which items we would be considering and how they would be

The next phase was going into much greater detail for this design and product specifications so that the following phase would be the implementation and it could be carried out in this computer program and would take specifications and translate them into computer language, writing the programs which would eventually be used to accomplish the money market trading.

Q That phase you just described, what was it called, the last one you mentioned?

A Implementation.

Q So there were three phases and the first was the one in which the First National City Bank --

A The functional specifications. The second phase was divided into two, design overview and again design specifications in adequate detail. That was the contract which ACT had been awarded when I was working there.

And the third phase was the writing of the programs from the specifications and that phase was called implementation. That phase is still I believe being carried out now.

Q Based on your knowledge of the computer software industry, what was the most important of these phases for your employer?

MR. LEWIS: Objection, your Honor.

THE COURT. Overruled.

Q You may answer?

A The most important phase was the design overview and then the design specifications.

If these phases were not do : correctly then the implementation of the specifications would not be accurate and the system would not function as it should have.

Q When was the design overview phase, which is the first part of the second phase which you just described, completed if you know?

A Completed on May 23rd, 1975.

Q What date had you requested that your leave of absence begin?

A May 23, 1975.

Q You testified that Mr. Lecht was not in the United States when you first discussed the leave of absence with Mr. Schachter.

Did he return to the United States in April of 1975 or May of 1975?

A I believe he returned the beginning of May in 1975.

Q Did you have any discussion with Mr. Lecht

concerning your leave of absence?

A Yes, I did.

Q When was the first conversation?

A The first conversation was some time at the beginning of May.

Q Who called the meeting?

A I did.

Q What did you say to him?

A I called the meeting and said to Mr. Lecht I wanted to confirm with him the dates of my leaving to go to England.

THE COURT: You said you wanted to confirm it?

THE WITNESS: Yes.

MR. FERNEY: May I have the last answer read, please?

(Record read.)

Q What did he say in response?

A He asked me about the situation on the Coins project, when the phases were supposed to be finished and I informed him of what was happening on the Coins project and he did not voice any objection.

Q Did you speak with Mr. Lecht again during the month of May 1975 concerning the leave of absence and the Coins project?

A Yes, I did.

Q When was that conversation?

A In the middle of May, I believe.

Q Who called that meeting?

A Mr. Lecht.

Q What did he say to you?

A He asked me to extend the date of my leaving for another week until a replacement had been found to work on the -- for me had been found to work on the enxt phase of the Coins project.

Q What did you say in reply?

A I agreed and that meant that I would be leaving ACT on May 30, 1975.

Q Did he say anything else to you during that meeting and if so what?

A I don't believe it was that meeting.

Q Excuse me?

A At one of these meetings.

Q This was a meeting when?

A In the middle of May.

Q In your previous testimony you stated that your salary had been increased from 23,000 to 25,500 in May of 1975. When was that done, more specifically?

A I believe it was during my first conversation

with Mr. Lecht when he asked me what my salary was at that time and when another review was scheduled.

THE COURT: Your first conversation in May you mean?

THE WITNESS: Yes. My first conversation in May of 1975.

THE COURT: The first of these conversations you just told us about?

THE WITNESS: Yes, your Honor.

Q More specifically what did he say to you and what did you say in response?

A He asked me what my salary was. I discussed with him what I was currently earning, which was $23,000.

He said that he would give me a raise of $2500 effective immediately. That would mean the pay period May 16 through May 30. I told him that I felt that I deserved a bigger increase and he said we will discuss it at a further date but that my $2500 increase would be effective May 16.

Q How are you paid your salary?

A On the 15th and 30th of each month.

Q On the 30th of May did you receive a paycheck from ACT?

A Yes, I did.

Q Did that paycheck include the salary raise which you have just testified to from 23,000 to 25,500?

A No, it did not but that was not unusual at ACT because the previous year I received a raise but did not get the money until a few pay periods past when it was all backdated to the specific date of the raise.

MR. LEWIS: Your Honor, I move to strike the last part of that.

THE COURT: I will let it stand.

Did you protest in any way the fact that you didn't get the $2000?

THE WITNESS: That I did not get my increase? No, I did not because I expected I would receive the money at a future date.

MR. LEWIS: I move to strike the last part.

THE COURT: I will let it stand.

Q You testified to two meetings with Mr. Lecht in the month of May concerning Coins and concerning your leave of absence and the timing of it.

Did you have any subsequent conversations in May 1975 with Mr. Lecht concerning these matters?

A Yes, I did.

Q When was the next conversation?

A During the last week in May after I believe

Mr. Lecht returned once again to the United States after a trip to Iran.

Q What was said by him to you and by you to him?

A We discussed in passing the fact that the replacement was being looked for. Then we had longer conversations at he end of that week.

Q You have been using the term replacement. Could you explain what is meant by that? The way you are using the word --

MR. LEWIS: Objection, in what context?

THE COURT: I think the word replacement calls for no explanation. It is a substitute, one to take your place. I don't think it calls for any explanation.

Sustained.

Q What were the duties of the replacement to be, the ones you were discussing with Mr. Lecht?

A The replacement would have to familiarize himself with the work accomplished during the design overview and further expand the design overview into detailed specifications.

Q Was this so-called replacement going to replace you on the design overview phase?

A No.

THE COURT: The replacement would have to review

what you had done?

THE WITNESS: Yes, he would have to.

THE COURT: Duplicate that work?

THE WITNESS: Not duplicate it because he would have to be able to expand from it.

THE COURT: He would have to understand it?

THE WITNESS: Definitely.

THE COURT: And then go on from there?

THE WITNESS: Yes.

Q Did you receive any telephone calls from Mr. Lecht during the last week of May 1975?

A I don't believe so.

Q On May 30, 1975 -- did you have any conversation on May 30 with Mr. Lecht concerning the leave of absence?

A Yes, I did.

Q When was the first meeting?

A I believe the first meeting was in the early afternoon.

Q Who called that meeting?

A I did.

Q What did you say to him?

A I explained to Mr. Lecht that this was the last day that I would be working on the Coins project prior to my leave. I had to attend a weekly review meeting on

the client's premises.

I felt that I should inform them or someone should inform them I would not be involved in the Coins project as of that day and that someone should introduce them to my replacement who had jointed ACT by that time.

Q What did he say?

A He said that he didn't want me to tell the bank and I should just go to the weekly review meeting as a normal meeting and he would want to tell the bank himself.

Q What else was said if anything?

A At this time he asked me if I would consider staying another week until my replacement had proved himself to be technically competent.

Q At this point in time, May 30, had the replacement been found?

A Yes.

Q What was the name of the replacement?

A George Rosen.

THE COURT: How do you spell that?

THE WITNESS: R-o-s-e-n.

Q Do you know, based on conversations with anyone at ACT, who hired Mr. Rosen?

A I believe he was hired by Mr. Lecht after he had been interviewed by Miss Tipton and introduced to the

company by the project leader, Mr. Messinger. Mr. Rosen and Mr. Messenger had worked together in the past at another corporation.

Q Did you work with Mr. Rosen during that week?

A Yes, I did.

Q When did Mr. Rosen first come to work?

A The beginning of the week beginning May 26. I am not absolutely sure which day.

Q When did you begin to work with him?

A The Tuesday of that week, Tuesday or Wednesday of that week.

THE COURT: How many days did You work with him?

THE WITNESS: Three I believe, your Honor.

Q Did you discuss Mr. Rosen's competence and ability with Mr. Messinger?

A Yes, I did.

Q What did he say?

A He in fact introduced me to Mr. Rosen and told me Mr. Rosen's technical background and told me how he felt Mr. Rosen was more than adequately qualified to replace me.

Q In working with Mr. Rosen did you form any opinion as to his competence?

A Yes.

Q What was your opinion?

A My opinion --

MR. LEWIS: I object, your Honor.

THE COURT: Overruled.

A My opinion is that he was very competent.

Q What day was May 30?

A Friday.

Q Did you have another meeting with Mr. Lecht?

A Yes, I did. After my return from the weekly review meeting at the bank much later in the afternoon.

Q Approximately how long did the meeting last?

A A half an hour.

Q Who called the meeting?

A Mr. Lecht.

Q What did he say to you initially?

A He asked me if I would consider staying for another week as he was not completely happy about my replacement. He did not yet know whether he would prove to be technically competent.

Q Did he say whether he had investigated the work of your replacement?

A No but I believe he had investigated the replacement.

Q What was your response to his statement?

A I indicated that I felt Mr. Rosen was very adequate to replace me and that I felt that I had carried out all my commitments to the company by staying the extra week until the replacement had been found and in order to hand over whatever information I had to the replacement and that I had made personal commitments to my family and that I wanted to leave.

Q Had you ever discussed with anyone at ACT the reasons why you wanted the leave of absence?

A Yes, I had.

Q Had you discussed it in your first conversation with Mr. Schachter?

A I believe so.

Q What did you say your reasons were?

A My reasons were that my mother was not well and I wanted to spend two months in England.

Q Had you discussed the reasons with Mr. Lecht?

A Yes, I had.

Q What had you told him?

A I told him the same thing.

Q What did he say to you after you made your statement that you just testified to?

A He said that if I would stay for another week he would let me go on the World Trade Center meeting to

Zaire which was scheduled for the end of June.

Q Would you explain more specifically about that?

A Each year the World Trade Center has an annual meeting which Mr. Lecht or myself usually attended. However, this year there was some question as to whether anyone would go because of the expense involved of going to Africa.

Q What did you say in response to his statement?

A I said that I still felt I had carried out my commitment and wanted to go on my leave of absence.

THE COURT: We will take a short recess.

(Recess.)

Q Miss Gatefield, we were testifying concerning a meeting late in the afternoon on May 30, 1975 with Mr. Lecht.

You had testified as to some of the things you said to each other.

MR. FERNEY: Would the reporter read the last answer to me?

THE COURT: He said if she didn't take her leave of absence she could go on a World Trade Center junket to Zaire or something to that effect.

Q You said you didn't want to do that. What

else if anything was said? What else did Mr. Lecht say during that meeting and what was the next thing that you remember that he said?

A The best I can remember he then said that he would not ask me to stay another week if he could have the use of my apartment while I was on my leave of absence.

Q What did you say in response to that?

A I said that I had already arranged for someone to live in my apartment and reiterated the statement about having fulfilled my commitment to the corporation and the fact that my mother was ill. I had carried out my duties with ACT and I wanted to leave that day and I assured him that should any problem arise with my replacement or with the project in general, he would be perfectly free to contact me in England.

Q Anything else said?

A Not that I can remember.

Q Did Mr. Lecht tell you that he would fire you if you left?

A No, he did not.

Q Went on your leave of absence?

A No, he did not.

Q How long had you known Mr. Lecht at that time?

A Over six years.

Q How frequent was your contact with him during that time?

A Very frequently, sometimes almost on a daily basis.

Q How well did you know Mr. Lecht.

A I believe I know Mr. Lecht very well.

Q Based on your knowledge of Mr. Lecht's personality would you describe his general temperament and demeanor during this conversation?

MR. LEWIS: I object to the form of the question, your Honor.

THE COURT: May I hear the question, please?

(Question read.)

THE COURT: Sustained.

Q Based on your knowledge of Mr. Lecht and what had been said during that day, during this meeting to you, do you believe he was threatening you with firing you if you went on your leave of absence?

A No, I did not believe that.

Q Based on conversations you have had with employees or officers of ACT, had Mr. Lecht ever threatened to fire other employees of ACT?

MR. LEWIS: Objection, your Honor.

THE COURT: Sustained.

Q In the course of some of these conversations with Mr. Lecht had you told him when you were planning to go to England precisely, when you were preparing to leave?

A I told him I was planning to go on Saturday, May 31 or Sunday, June 1st.

Q Did you go to England?

A Yes, I did go to England.

Q When?

A June 2nd, 1975.

Q Did you change your plans for departure?

A My plans for departure were not absolutely set because I was traveling on a standby airline ticket as this had been furnished to me by my sister who works for British Airways.

Q When did you arrive in England?

A The morning of June 3rd.

Q After your arrival in England did you receive any communication from ACT officials?

A Yes, I did.

Q What was the nature of the communication?

A I received a letter from Charles Lecht on the 5th or 6th of June. I believe the 6th.

Q I hand you a document marked as Exhibit 4. Is that the letter you received?

A Yes it is.

MR. FERNEY: I introduce Exhibit 4 in evidence.

THE COURT: Received.

(Plaintiff's Exhibit 4 was received in evidence.)

xx MR. FERNEY: May I read this letter to the jury?

THE COURT: Yes.

(Exhibit read.)

Q I would like to ask some questions concerning this letter.

It refers to a Jack Lowenthal. Who was Jack Lowenthal?

A The controller of ACT.

Q Who is Rosemary?

A Rose MacFonaldson, Mr. Lecht's secretary.

Q Who normally handled at that time personnel matters at ACT?

A Ed Mosca.

Q Did you testify as to the date that you received this letter?

A Yes, I did.

Q What was it?

A June 5 or 6. I think more probably the 6th.

Q What if anything was the next communication you had with ACT after you received this letter?

A I wrote a letter to Jack Lowenthal.

MR. FERNEY: Your Honor, counsel for the defendant has the original of that letter. I would like to introduce it in evidence.

Q I hand you a document marked Defendant's Exhibit A.

Is this the letter you wrote?

A Yes, it is.

MR. FERNEY: I introduce Exhibit A into evidence, your Honor.

THE COURT: Received in evidence.

(Defendant's Exhibit A for identification was received in evidence.)

xx MR. FERNEY: May I read this letter to the jury?

(Letter read.)

MR. LEWIS: Your Honor, 1st, that is the 1st.

MR. FERNEY: June 1st.

THE COURT: What is your problem?

MR. LEWIS: No problem.

MR. FERNEY: On the other side of the letter it is identified --

THE COURT: Is that by permanent or be permanent?

MR. FERNEY: She wrote it "to permanent."

It is identified on the other side, the imprinted material by airmail letter and the French language Par avion.

It is addressed to Mr. J. Lowenthal, ACT, 21st floor, 437 Madison Avenue, New York, New York, U.S.A., 10022.

The postmark on it says "London, WI 6.15 p.m., 6 June, 1975" with a B at the bottom.

The sender's name and address is shown as Marion Gatefield, 49 Cortlands, Maidenhead, Burk, England.

Q First of all, this letter is dated June 1st, 1975. Did you write this letter on June 1st, 1975?

A No, I did not.

Q Do you have any idea why you would date it June 1st if you did not write it on that date?

A I wrote this letter --

MR. LEWIS: Objection, your Honor.

THE COURT: Sustained.

When did you write the letter is the question?

THE WITNESS: June 6, 1975.

MR. FERNEY: May I approach the bench?

THE COURT: Did you write it before or after you received the letter?

THE WITNESS: I wrote it after receipt of my termination letter from Mr. Lecht.

Q Where were you on the 1st of June, 1975?

A I was in New York.

Q You state in this letter --

THE COURT: Could I see the letter?

(Handed to Court.)

Q In the letter it is written "Should my leave turn out to permanent."

Do you have any explanation why you would say should my leave turn out to be permanent?

A I wrote this letter shortly after I received the termination letter from Mr. Lecht. My only explanation is that I was very upset at receiving that letter and wanted to make sure my insurance was carried on and immediately sent this letter back to Mr. Lowenthal as Mr. Lecht instructed that my communications were to be with Mr. Lowenthal.

Q Did you have any reason to believe that your leave might turn out not to be permanent in view of the fact that you received a letter terminating your employment, when you wrote it?

MR. LEWIS: I don't get the form of the question. I object.

THE COURT: Sustained.

Q In view of the letter that you had received from Mr. Lecht, did you believe that your leave or did you believe that your employment had been terminated or not terminated?

MR. LEWIS: I object to that question, your Honor.

THE COURT: Overruled. I think we are entitled to know all she understood as to the letter.

Did you understand that you had been fired from the letter?

THE WITNESS: I understood this letter of termination but having known Mr. Lecht for six years I had not expected that this would be the last communication from him concerning the situation.

Q Did Mr. Lecht ever tell you he had terminated someone else whose termination did not turn out to be permanent?

A Yes.

Q What persons if any did he name?

A Over the years, I don't remember the precise dates, he had terminated Susan Epstein who continued to work

for the corporation.

He terminated Ralph Stout who continued and still works for the corporation.

He had terminated Ann Tipton who still works for the corporation.

Q Had any of these people ever told you that they had been terminated by Mr. Lecht?

MR. LEWIS: Objection.

THE COURT: Sustained. I don't see the relevance. She thought maybe he would change his mind. Is that your point?

THE WITNESS: Yes.

Q What was your next contact with ACT after this?

A I received a letter from Oscar Schachter in answer to my insurance question. This is the beginning of July.

Q What was your next contact after that?

A I telephoned Ed Mosca in order to arrange for the removal of my personal belongings from the company and to establish that my insurance was being continued on a private basis.

Q What did you say to him and what did he say to you?

A I asked him if my insurance with the Blue Cross

and with Blue Shield was on a private basis and he said he wasn't quite sure of the situation because he had been informed to take me off the insurance and told to put me on the insurance and told to take me off the insurance and he would find out and call me back.

Q Did he say who issued those instructions?

A Mr. Schachter, Mr. Schachter issued those instructions.

Q After you received the letter of termination did you begin to look for other employment?

A Yes, I did.

Q What kind of position were you attempting to find?

A A position comparable to the one that I had at ACT.

Q At what salary?

A Approximately $25,000 a year.

Q Did you have a resume prepared?

A Yes, I did.

Q I hand you a document which I have marked as Exhibit 5 for identification.

Is this the resume you prepared?

A Yes.

MR. FERNEY: I introduce Exhibit 5 into evidence.

THE COURT: Received.

(Plaintiff's Exhibit 5 for identification was received in evidence.)

xx Q In what geographical area were you seeking employment?

A I was looking primarily in the New York area but I was willing to travel or to work in other locations.

THE COURT: When did you commence to look for employment?

THE WITNESS: I first began in June when I was in England by contacting people that I knew in the industry in England.

THE COURT: You looked for placement in England?

THE WITNESS: I was exploring the situation as to what was available in England then.

THE COURT: I gather you found nothing?

THE WITNESS: I did not.

THE COURT: You then planned to try New York again?

THE WITNESS: Yes.

THE COURT: When did you first try New York again?

THE WITNESS: When I returned to New York at

the very end of June or the beginning of July, 1975.

THE COURT: You cut short your two months leave of absence?

THE WITNESS: Yes, I did, in order to come back here and start looking for a job.

BY MR. FERNEY:

Q How did you seek your new employment? What methods did you use?

A I registered with employment agencies; I contacted personal friends; and contacted business acquaintances in the computer industry and I answered advertisements in the New York Times.

Q Are you employed now?

A Yes, I am.

Q By whom?

A I am employed by another consulting company called Lambda Technology, 444 Madison Avenue.

Q What is your salary?

A $25,500 per annum.

THE COURT: How long were you out of work?

THE WITNESS: I was out of work from June 1, 1975 until March 29, 1976.

Q At the time that your employment with ACT was terminated, did they have any outstanding obligations to

you and did they owe you any money?

A They owed me money for my expense report that I submitted on May 29.

Q Do you remember what the amount of that expense report was?

A $49.87, something like that.

MR. FERNEY: I would like to introduce Exhibit 6 which is a copy of it.

MR. LEWIS: Your Honor, may we approach the side bar for just a second?

(Discussion at he side bar off the record.)

THE COURT: Objection overruled.

Received.

(Plaintiff's Exhibit 6 for identification was received in evidence.)

xx Q Did you keep a copy of that expense report?

A Yes, I did.

Q I hand you Exhibit 6 and ask you whether that is that copy?

A Yes, it is.

Q In Mr. Lech's letter to you he stated -- well, perhaps I should read it to be precise. He stated:

"P.S. Your personal effects will be boxed to await your instructions regarding their disposition."

Did you receive all of your personal effects from ACT?

A No, I did not.

Q What have you not received?

A Certain items of clothing, a raincoat, umbrella. There were a six years' supply of trade magazines that I had accumulated which were in my office which were not returned to me.

Q Did you go to ACT to pick up your property?

A Yes, I did.

Q When was that if you remember?

A I went twice. I went once on August 18. When I started to sort out my belongings I was asked to leave by William Loeb because he would not assume the responsibility of allowing me to take my belongings. He insisted I wait until Mr. Lecht returned from a trip abroad.

So I waited and communicated -- he could give me certain dates when I could go and pick up my belongings and eventually I believe I picked them up the beginning of September.

MR. LEWIS: I object to any part of this testimony in view of the fact that he didn't claim it.

THE COURT: Did you make any claim for the loss

of the umbrella and raincoat?

MR. FERNEY: Yes, I did.

THE COURT: We will let it stand.

Q Based on your knowledge of the cost of these items and any depreciation, what approximate value did you put on them?

A I believe the approximate value was $300 because of the fact that even though the trade journals were issued free, in order to replace them you had to pay.

Q In conducting your search for new employment did you incur any expenses?

A Yes, I did. I incurred extra expense in getting to and from interviews; in entertaining people to discuss job situations and an increase in my phone bill.

I found it necessary to rent a typewriter and I also found it necessary to buy a telephone answering machine in order that I could be informed of my appointments when I was not in my apartment.

MR. LEWIS: Your Honor, I move to strike this on the grounds we discussed before.

THE COURT: Overruled.

Q Have you calculated the total amount of these expenses?

A I believe them to be $815.

Q Do you have a breakdown for each different item?

A Yes, I do.

Q Do you remember what that breakdown is?

A I believe we just stated it.

Q The breakdown for the vrious types of --

THE COURT: Have you a list?

MR. FERNEY: I do have a list.

THE COURT: Put it in wholesale. We will be here forever on this saga.

MR. FERNEY: I hand you a document entitled Exhibit 7.

Is that a list which you have made of the expenses?

A Yes, it is.

MR. FERNEY: I offer it.

THE COURT: Received.

(Plaintiff's Exhibit 7 for identification was received in evidence.)

xx Q Did you make a list of the contacts you had while you were looking for employment?

A Yes, I did.

Q I hand you a document which is marked as Plaintiff's Exhibit 8 for identification.

You had your testimony taken in a deposition approximately two weeks ago, is that true?

A Yes.

Q On that occasion did you hand Mr. Lewis a list?

A Yes, I did.

Q Is that same list?

A Yes, with additions. It called for some dates and other names and I informed Mr. Lewis I would check on it.

Q I hand you Exhibit 8 ad ask you if this is the list of contacts as testified to by you?

A Yes.

MR. FERNEY: I offer it.

THE COURT: Received.

(Plaintiff's Exhibit 8 for identification was received in evidence.)

xx Q Do you know whether Mr. Messenger still works for ACT?

A I believe Mr. Messenger is no longer employed at ACT.

Q Is this belief based on conversation with anyone or --

THE COURT: How is this material?

MR. FERNEY: This is material as to the events on June 2nd.

THE COURT: Whether he is still employed?

MR. FERNEY: Yes.

THE COURT: I don't see the materiality to that.

MR. FERNEY: May I approach the bench?

THE COURT: No, let's move along.

Q If Mr. Lecht called you early in June concerning a crisis situation on the Coins project --

THE COURT: Sustained.

The question is bad in form right at the kick-off.

MR. FERNEY: That concludes my direct examination, your Honor.

THE COURT: We will take our luncheon recess until 2 o'clock.

Don't talk about the case, don't let anybody talk to you about it. Have a pleasant lunch and return right to the jury room when you come back.

(Luncheon resss taken until 2.00 p.m.)

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AFTERNOON SESSION

2:23 p.m.

M A R I A N G A T E F I E L D, resumed.

(In open court; jury present)

THE COURT: Proceed.

CROSS-EXAMINATION

BY MR. LEWIS:

Q Miss Gatefield, it is your contention you had an equipment contract with ACT?

A Yes.

Q When did you execute that contract?

A In November 1973.

Q Where did you execute it?

A I believe it was in my office.

Q And you waited a year before you signed that contract?

A I did not receive the contract to sign it until then --

THE COURT: I am sorry, I can't hear either one of you. It is a nice tete-a-tete you are having, but I think the jury and the Judge would like to hear what you are saying.

A I did not receive a contract to sign until November, 1973.

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THE COURT: Perhaps if you would examine from over here.

MR. LEWIS: Your Honor, I think I can project my voice.

THE COURT: The witness tends to look at you, not me or the jury. That is why we have that lectern.

Can I have the witness' last answer.

(Answer read)

Q And there was a time when Mr. Schachter came to you and asked you for a copy of that contract, is that correct?

A He came to me and asked me -- gave me a blank copy and asked me if I had my copy.

Q What did you say?

A I said yes, I had my copy.

THE COURT: Can you hear the witness?

Q Did he ask you for an original of that contract?

A No, he said that he had misplaced his copy which was the original, I believe.

Q Did you have a signed copy?

A Yes, I did.

Q Did you give him a signed copy?

A No, I did not.

Q So you never furnished to ACT a copy of that

contract executed by you, did you?

A My personal copy, I did not furnish back to ACT.

THE COURT: Did you deliver a copy signed by you to ACT, that is the question.

THE WITNESS: I am sorry.

THE COURT: A copy signed by you.

THE WITNESS: No.

THE COURT: Did you ever give them a copy signed by you?

THE WITNESS: Yes.

THE COURT: When?

THE WITNESS: When I signed the original copy.

THE COURT: When was that?

THE WITNESS: November 1973.

Q Miss Gatefield, you were deposed prior to this trial, is that correct?

A Yes, I was.

Q 'd you make this answer to this question, on page 28:

"Q Did he ask you for a copy of the original?

"A He said did I have a copy and I said yes."

That was a copy of the original, is that correct? You had the original in your hands, didn't you, Miss

Gatefield?

A Would you please explain?

Q You had the original copy and a copy of the original in your hands and you never returned it to ACT representatives, did you?

A I did return the original to ACT representatives, yes.

Q When did you do that?

A November 1974.

Q Who did you return it to?

A I believe I returned it to Mr. Oscar Schachter's secretary.

Q You believe, you are not sure?

A I believe I returned it to Oscar Schachter's secretary.

Q Your testimony is that Mr. Schachter asked you for a copy of the original and you gave him that original, is that correct?

You were asked for an original and you did not give him an original, is that correct?

A I did not furnish Mr. Schachter with my contract, whichever exhibit that is.

Q But you told him you were going to return a copy of the original to him, is that correct?

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A Yes.

Q And you never did, did you?

A No.

Q And that took place when?

A He asked me in the late part of 1974.

Q You were uncertain as to whether you wanted to sign that contract, weren't you?

A No.

Q You were certain of it?

A I was certain, yes.

Q You never expressed to anybody the fact you were uncertain about signing that contract?

A Not that I remember.

Q Not to Mr. Schachter?

A Not that I remember.

THE COURT: How long did you have this piece of paper in your hand before you signed it?

THE WITNESS: I signed it the day I was given it.

THE COURT: You were never given this 1972 document until 1974, is that what I understand?

THE WITNESS: No, your Honor. I was given it in 1973.

THE COURT: The document is dated November 1972 and you say you never even saw it until November 1973,

rkas6 Gatefield - cross

a year after its date?

THE WITNESS: That is right, your Honor.

THE COURT: Then what did you do with it? Who gave it to you and what did you do with it?

THE WITNESS: Mr. Schachter gave it to me and I signed the original and my copy and returned the original to his office, keeping my copy.

THE COURT: When, that day?

THE WITNESS: I don't remember if it was the same day.

THE COURT: The same day he gave it to you?

THE WITNESS: Very shortly thereafter, if it was not the same day.

Q When you received this contract, did you read it?

A Yes, I did.

Q Did you understand it?

A I believed that I understood it, yes.

Q Did you read the part in paragraph 1(b) that says, "Employee shall perform such duties as may be assigned to him from time to time by employer, shall devote his entire time, attention and energies to the business of the employer and shall faithfully perform his duties in connection with the directions of the employer"?

A Yes, I read that paragraph.

rkas7 Gatefield - cross

Q So that you in your own testimony, at least, are contending that you had a contract, you read it and you understood it and you agreed you would faithfully perform the duties in accordance with the employer's directions, is that correct?

A Yes.

Q The contract also provided, did it not, for a vacation period, is that correct?

A Yes.

Q Paragraph 6 of that contract, it states in part: "Such vacation may be taken whenever consistent with the performance of her duties thereunder."

Did you read that?

A Yes.

Q And you understood that?

A I believe so.

Q You were familiar with the Coins contract, is that correct?

A Yes.

Q You have testified to that?

A Yes.

Q Was this an important contract for ACT?

A Yes.

Q It was a substantial contract for ACT, was it not?

A It was a contract for $94,000.

Q Was there any follow-on work for that contract?

A There was no follow-on work but there was expectation of follow-on work.

Q In other words, if the work was performed competently, adequately on the first part, the follow-on work might very well come?

A If the price was acceptable, yes.

Q Did you understand that it was ACT's intention to obtain this follow-on contract?

A Yes.

Q You had managerial responsibilities under this contract, did you not?

A Yes, I did.

Q Plaintiff's Exhibit 5, your resume, indicates you managed the design phase of a real time online money market trading system for a major bank.

A Yes.

Q And you prepared that, is that correct?

A Yes.

Q What money market trading system were you referring to?

A Coins.

Q Were you familiar with the various documents that

rkas9 Gatefield - cross

were prepared in connection with the Coins project?

A Not all of them.

Q Which ones were you not familiar with?

A I was not familiar with the documents that were prepared prior to the obtaining of the contract.

Q But those that were prepared subsequent -- when you say obtaining of the contract, what do you mean?

A The proposal document.

Q In other words, after the proposal document you saw the documents that were connected with the Coins project?

A I saw some of the documents.

Q I have asked you which ones did you not see?

A I do not know which ones I did not see.

Q Are you familiar with any area you did not get involved in?

A I was not involved in some of the communications with the bank by Miss Tipton and of Mr. Messinger's communications.

Q You were familiar with the project schedule, is that correct?

A Yes.

Q How many phases was this Coins project supposed to be?

A Do you mean the Coins project as a whole, or the

rkas10 Gatefield - cross

Coins project when I was at ACT?

Q The Coins project as a whole.

A Functional specifications, design overview, detailed system design implementation.

Q Implementation was a phase, is that correct?

A Implementation was the phase that ACT was hoping to get as the next part of the contract.

Q So that ACT did not have a contract for implementation phase at that particular time?

A No.

Q When you spoke to Mr. Schachter as you testified concerning an alleged leave of absence, did you say when you were going to take that leave of absence?

A I believe I told Mr. Schachter that I would take the leave of absence commencing May 23 for two months.

Q You told him when you were going to be available on that project, isn't that so?

A Yes.

Q You remember this testimony you gave in the deposition?

A Yes.

Q Do you remember making these answers to these questions at page 42:

"Q On April 7 when you met with Mr. Messinger and

rkasll Gatefield - cross

Miss Tipton, did you advise them you could not complete that project, the design phase?

"A I advised them I would be available for the first phase of the project which was at that time four to six weeks."

Do you recall that question and that answer?

A Yes.

Q Do you recall testifying as to what the first phase was?

A Yes, a four- to six-week involvement for the initial data base design, specifying the elements that would be used by the system.

Q Do you remember these questions and these answers that you gave at the deposition on page 33:

"Q What did Miss Tipton tell you on the day she spoke to you about this project?

"A She asked me if I would work on the project for the first phase as she needed some help.

"Q What was the first phase?

"A The design phase."

Do you have any problem with that answer that you gave?

A Yes.

Q What is your problem?

rkasl2 Gatefield - cross

A My problem is at that time I had not reviewed the back contract and was not absolutely familiar with the definition of the first phase which I since established to be the design overview.

Q You had no problem in answering that question when you were deposed.

Furthermore, you stated on page 34, to this question you answered:

"Q What was the second phase?

"A Implementation."

Are you changing your answer to that too?

A Would you read that?

MR. FERNEY: Objection.

Q On page 34, my question was:

"Q What was the second phase?

"A Implementation."

Are you changing your answer on that?

MR. FERNEY: Objection.

THE COURT: Sustained as to the form of the question.

Q Is that a correct version in your mind of what phases were on this project?

A At the time I gave you the answer in the deposition, I was not sure of the precise working of the

rkas13 Gatefield - cross

phase names for this project. I had not reread the contract with FACB as it had not been furnished to me as yet.

Q There were design responsibilities that took place throughout the entire phase of work, whatever phase you are talking about, up until implementation, isn't that correct?

A I don't understand your question.

Q There was design work until implementation?

A Definitely.

Q There was work on specifications during that entire period of time?

A Yes.

Q And you were slated to work on that project for the entire period of time, weren't you?

A No.

Q Up until implementation?

A No.

MR. LEWIS: Would you mark this as Defendant's Exhibit P for identification.

(Defendant's Exhibit P marked for identification.)

Q Miss Gatefield, do you know what this document is?

A Yes.

rkas14 Gatefield - cross

Q Have you seen that before?

A Yes, I have.

Q And that is a project schedule, is it not?

A Yes.

Q And this project schedule has your name on it, does it not?

A Yes, it does.

Q The project schedule shows how many weeks this project was to go on, is that correct?

A Yes.

Q And it shows twelve weeks, does it not?

A Yes, it does.

Q It shows you were to be on this project for the entire period of time, doesn't it?

A That is what the chart shows, yes.

Q You knew that ACT was counting on you to work on that project for the entire twelve weeks, didn't you?

A No.

Q You didn't know that?

A No.

Q When you left the project, had all the work that ACT expected of you been completed?

A Yes.

Q There was no other design work to be performed?

rkasl5 Gatefield - cross

A There was the entire design phase yet to begin, the design specification phase, detailed design. That was not my work.

Q You were not going to be there for that phase? You had no intention of being there for that phase?

A I had asked for leave beginning May 23. That phase was not scheduled to begin until the beginning of June.

Q But you asked to leave after the first phase, isn't that right?

A Yes.

Q Whatever the first phase was, you understood also that sometimes there are slippages in work for a computer company, isn't there?

A Yes, there is.

Q And you understood this one would have to be extended for some reason or another?

A Yes.

Q You also understood, did you not, what the contract said with regard to your obligations to the employer?

A Yes.

Q So there was a very good possibility it was going to be necessary, even under your own interpretation of

rkas16 Gatefield - cross

what that phase was, for you to stay on for a long period of time?

A Yes.

Q And you were manager on that design phase, weren't you?

A I was second in line on that project.

Q So you were the second ranking person working on the project?

A Yes.

Q And it was an important project?

A Yes.

Q Were you seeking to leave on a leave of absence because of some emergency?

A I was seeking to leave because my mother was ill and I wanted to spend two months with her in England.

Q And you had some vacation time coming to you, didn't you?

A Yes, I did.

Q As a matter of fact, you had your whole three weeks for 1975 coming to you?

A Yes.

Q And you hadn't taken any vacation, had you, that year, for that year?

A For 1975 I had not taken any vacation.

rkas17 Gatefield - cross

Q Did you receive any telegrams or correspondence concerning any illness of any member of your family, your mother, in April or May?

A None. No telegrams, but telephone calls.

Q Long distance telephone calls from London or thereabouts?

A Yes.

Q Did you tell anybody that it was an emergency for you to leave on a leave of absence?

A I gave the reasons for my leave, yes. I told him my mother was ill. I told Mr. Schachter.

Q Did you tell him it was an emergency?

A I did not use those words.

Q Did you tell anybody that she was hospitalized?

A No, I did not tell anybody she was hospitalized.

Q She was ill before, wasn't she?

A Yes.

Q And you had not taken leaves when she was ill on other occasions?

A I had stopped in London when she was ill for a weekend on my way back from a trip to Teheran.

Q You had never asked anybody at ACT for a leave of absence prior to that time because of your mother's illness, had you?

A No.

Q You were asked to work on the Coins project by Oscar Schachter?

A Yes.

Q Were you asked by anyone else to work on the Coins project?

A Yes. By Anna Tipton.

Q Who was she?

A General manager of the New York office.

Q Did you advise her of the reasons why you were going to find it necessary to take a leave of absence?

A I believe I discussed it with her, yes.

Q What did you say?

A I told her that I wanted to take two months' leave beginning May 23 and spend that time in England with my mother.

Q What did she say?

A At the point when this conversation took place, she was asking me if I would help her out on the Coins project that her division had just obtained, and I said yes, I would, and I would be perfectly willing to help on the design overview phase and she agreed.

Q You used those words, design overview?

A No, because we did not have a contract at that

rkas19 Gatefield - cross

time.

Q What words did you use?

A I don't recollect, but I did specify the time frame.

Q What time frame did you specify?

A Four to six weeks.

Q Four to six weeks or the end of the first phase? Which words did you use?

A Probably both.

Q And you gave Anna Tipton a specific date as to when you were going to leave?

A I believe so, yes.

Q And she didn't say anything to you about the fact, well, Marian, I am not sure it is going to be completed at that time.

A I don't remember such words.

Q That wasn't discussed between you and Anna Tipton?

A Not to my recollection.

Q Was it discussed between you and Mr. Messinger?

A Could I ask you to define what was to be completed?

Q The first phase. Did you give them a specific date? Did they say anything to you that it may slip?

A Not when I gave them my specific date, no.

rkas20 Gatefield - cross

Q They said they had no problems with that?

A Right.

Q Did there ever come a time when there were some problems on this project where it looked like it might have to slip?

A I think there was a slight delay and an extra week was asked for. That is in one of those memos that you showed me.

Q Weren't there problems with the functional specifications they were receiving from First National City?

A Yes.

Q And you found those difficult to work with and it delayed you, didn't it?

A Yes.

Q And that delay occurred around the first part of May, late April, didn't it?

A No. It occurred throughout the whole project because we began immediately working with the functional specificaion and found there were holes in them.

Q At any time during that period did anyone say to you, we are going to have some problems and we would like to have you stay on as long as possible?

A Yes, but those problems were resolved and we made our deadline on May 23.

rkas21 Gatefield - cross

Q The deadline for what?

A The design overview document production.

Q You weren't sure at the beginning that was the part you were going to work on only, is that true?

A Yes, I was sure.

Q You said that the design overview hadn't been established at that point.

A There was a checkpoint established for a four- to six-week period and that was my commitment to that project. That checkpoint is simply a convenient checkpoint, looking back.

It is a natural breaking point in the project?

Q And there was no work you were supposed to do beyond that breaking point?

A No.

Q Even though you were manager on this project?

A Yes. Yes, there was no work.

Q Did you duscuss a replacement with anybody at ACT?

A Yes, I did.

Q Who did you discuss replacement with?

A Mr. Lecht, Mr. Schachter, Anna Tipton, Mark Messinger.

Q Do you recall what you told Mr. Messinger?

rkas22 Gatefield - cross

A I am afraid I don't understand the question.

Q Do you recall what you told Mr. Messinger about a replacement, if anything?

A I don't recall.

Q Do you recall what he told you?

A I recall him saying that he was looking for a replacement and had found one.

Q When did he say he had found one?

A The last week in May.

Q Up until that time, he had not found any replacement?

A No, they had not.

Q You didn't have any reservations to go back to England, did you?

A No.

Q All you did was go down to the airport and wait to get on a flight, any flight?

A Yes.

Q You were not committed to any ticket reservations of any kind, isn't that true?

A Right.

Q But you are testifying that no replacement had even been considered as even possibly acceptable until the last week of May?

rkas23 Gatefield - cross

A That is not true. Replacements had been considered. Replacements within ACT. Actually, ACT personnel had been considered.

Q But no one had been found?

A Correct.

Q This was a replacement for you after this breaking point you talked about, is that right?

A Yes.

Q This was a replacement that Miss Tipton and Mr. Messinger and Mr. Schacter I think you said, and Mr. Lecht were looking for, is that right? I believe that was just your testimony.

A Yes.

Q Several people at ACT, senior people, were looking for a replacement?

A Yes.

Q To take care of your responsibilities after that breaking point, is that right?

A Yes.

Q Do you remember making these answers to these questions at your deposition on page 71:

"Q Do you remember anything concerning your conversations with Miss Tipton regarding leave of absence after the first series of meetings on the 4th and 7th of April?

rkas24 Gatefield - cross

"A I remember discussing obtaining a replacement for me.

"Q What about the leave of absence, did you say anything about that to her?

"A No, because I assumed I was phasing out of the project.

"Q Did she say anything about the replacement?

"A She said she would attempt to find one or was in the process of finding one.

"Q What were they looking for a replacement for? The implementation, correct?

"A They were looking for someone to wo k on the implementation phase, yes. I don't remember the precise definition of the phase. That is in the First National City Bank contract."

But you knew what they were looking for when they were looking for a replacement was someone to work on the implementation phase, is that right?

A No, it was to continue with the design specification.

Q You don't agree with that answer?

A I qualified by answer by saying I am not sure of the precise terms because I have not reread the contract.

Q You can't recall from the spring of last year

rkas25 Gatefield - cross

what line of demarcation there was between the design work they were doing and the implementation work?

A I did not recall, obviously.

Q How long had you been a systems analyst?

A Six years.

Q You worked in systems analysis prior to that time, didn't you?

A Yes.

Q So it is more than six years?

A Yes.

Q Did you tell anybody else other than Mr. Schachter, Mr. Lecht, Mr. Messinger, Miss Tipton, at ACT that you were planning to take a leave of absence in the early spring?

A Yes.

Q When did you tell them that?

Who did you tell it to?

A I took it to Frank LoSacco and Rosemarie Donaldson.

Q Did you give them a reason for wanting to take a leave of absence?

A I gave him the same reasons as I have given you.

Q On May 30, which was the last day of your employment, did you know that Mr. Messinger was leaving the company?

rkas26 Gatefield - cross

A No.

Q You said you worked with Mr. Rosen for three days, I think you testified.

A Yes.

Q Wasn't he there only for two day.

A My remembrance is three days.

Q Tuesday, Wednesday and Thursday, is that right?

A No, that is not right. He was there on Friday. I worked with him on Friday.

Q Did you go see the First National City Bank on Friday?

A Yes, I did.

Q Did you go with Mr. Rosen?

A No, I did not go.

Q He was not there?

A He was there.

Q You knew he was going to be leaving, didn't you?

A No, I did not, otherwise I would not have asked Mr. Lecht that afternoon if I could take him with me to the bank.

Q You asked Mr. Lecht whether you could take Mr. Rosen to the bank?

A I testified earlier this morning to that.

Q What did Mr. Lecht say to you?

rkas27 Gatefield - cross

A He said no because he wanted to tell the bank I was leaving.

Q He wanted to tell the bank you were leaving. What did he say about Mr. Rosen?

A Nothing.

Q He didn't know anything about Mr. Rosen?

A Yes, he did.

Q Did he say anything about Mr. Rosen in that conversation?

A He just said, "No, let me tell the bank."

Q About Mr. Rosen or about you?

A Both.

Q What was he to say to the bank about Mr. Rosen?

A Mr. Rosen had been employed by him to work on the First National City Bank project as my replacement.

Q Wasn't what he was going to tell the bank that Mr. Rosen was leaving as well?

A No.

Q Mr. Rosen hadn't been approved by the First National City Bank, had he?

A No.

Q Didn't the First National City Bank have to approve people working on this project?

A I believe they had five days in which to decide

rkas28 Gatefield - cross

whether they wanted a person working on the project of not.

Q Had they expressed any approval of Mr. Rosen workir, on the project?

A They had not been informed of Mr. Rosen's existence.

Q That was because ACT wasn't sure whether he was going to work on the project or who was going to work on the project, including yourself; isn't that true?

MR. FERNEY: Objection.

THE COURT: If she knows.

A That is not true. He was hired specifically to work on that project.

Q But ACT hadn't made up their mind whether he was going to stay on that project, did they?

A I don't know.

Q You don't know, but you were working with him, you said, and you were talking to Mr. Lecht, but he didn't know that?

A I didn't know.

Q So you didn't know on the last day of your employment whether Mr. Rosen had or had not been approved by the First National City Bank, did you?

A I knew he had not been approved because they didn't know of his existence.

rkas29 Gatefield - cross

Q You never agreed with Mr. Lecht, actually agreed with Mr. Lecht, about a raise, did you?

A I agreed to accept what he offered with the stipulation that we would discuss it again, discuss a possible further increase in the near future.

Q So was it your understanding that it was still a subject of conversaion and it had not been resolved?

A It was my understanding that I had been given a raise of $2500 effective May 16 and that we would discuss my salary again in the near future.

Q That was not acceptable to you as you conveyed it to Mr. Lecht?

A I did not say it was not acceptable. I said I would accept that for now.

Q But you wanted more?

A Yes.

Q Incidentally, didn't that raise put you at a higher level, salary level, pursuant to this contract that you say existed between you and ACT?

MR. FERNEY: Objection.

THE COURT: Sustained.

Q Do you know what the salary level was at which you were supposed to be under that contract?

A The salary level above $22,000 was negotiable

rkas30 Gatefield - cross

according to my recollection.

Q You could negotiate any modifications to the contract you wanted, isn't that true?

THE COURT: Doesn't the contract speak for itself? I would assume that to be the basis of the objection.

Q You never got that raise, did you?

A It was not incorporated in my May 30 check, no.

Q You met with Mr. Lecht on May 30 on several occasions?

A Yes.

Q Did you say anything to Mr. Lecht about not getting a raise?

A No.

THE COURT: Let's proceed. We are coming to the holidays very shortly and we must finish this before that.

MR. LEWIS: I just needed these other documents, your Honor.

Q There came a time when you began to look for additional employment, or other substituted employment, right, after you left ACT?

A Yes.

Q Did you have any correspondence of any kind with any companies that you were seeking to obtain employment with?

rkas31 Gatefield - cross

A Apart from sending them my resume, no.

Q You indicated before in discussing your damages that it was necessary for you to, I think, rent a typewriter or use a typewriter.

What were you using that typewriter for?

A Just for writing a couple of notes saying my resume is included as per our telephone conversation.

Q And you sent that resume to prospective employers?

A I sent my resume with a note sometimes typed or handwritten.

Q You remember from the depositions that I requested of you and your lawyer you turn over copies of every piece of correspondence you sent to employers. You have no copies of those, is that correct?

A No, I do not.

Q You kept no file of where you had sent these various resumes?

A No.

Q You just sent them indiscriminately to various employers throughout the country?

A I sent them in answer to ads in The Times and and whenever requested to do so.

Q Most of these employers that you contend you

rkas32 Gatefield - cross

entered with, were they interviews you actually held with them?

A Yes, they were.

Q How many would you say there were?

A Approximately -- I am not sure. Approximately ten or fifteen.

Q Were all these in response to New York Times advertisements?

A No. Most of them were not.

Q Most of them were through personal contacts?

A Personal and business contacts.

Q Business contacts being your contacts with ACT?

A And with other corporations.

Q You weren't seriously looking for a job during that period of time?

A Yes, I was.

Q You have no correspondence to attest to that?

MR. FERNEY: Objection.

THE COURT: I am sorry, I couldn't hear either of you.

Q But you have no correspondence to attest to that?

THE COURT: That is argumentative. Please save it, Mr. Lewis.

rkas33 Gatefield - cross

Q You have IBM on here. Did you visit the offices of IBM for any interview?

A No, I did not.

Q You have Jarvis Walker on here. Is that a company?

A That is am employment agency.

Q Did you visit with them?

A Yes, I had an interview with Mr. Copeland.

Q When was that?

A I believe September, August, September.

Q Did you interview the World Bank, another employer you have on here?

A I had conversations with a personal friend of mine at World Bank concerning opportunities I might have there.

Q Telephone conversation?

A No, in person.

Q Where was that?

A Here in New York.

Q Did you go to the World Bank offices?

A No.

Q Manufacturers Hanover is on here. Did you go to the Manufacturers Hanover offices for an interview with anybody at that company?

A Manufacturers Hanover did not reply to my resume.

Q Haskins & Sells is another one you have here. Did you have any interview with them, or how did you contact them?

A I went to Haskins & Sells' offices and spoke to Gerald Shotman.

Q What did he say to you?

A We discussed the possibility of there being openings there.

Q What did he say?

A He would pass my resume on to the proper people. He had been a former associate of mine on the General Electric project.

Q Did you contact him subsequently?

A Yes.

Q What did you say to him?

A I asked him if he had passed my resume on and he had said yes.

Q Did you ask him whether you had a job?

A His position there is not such as to be able to offer a job.

Q When you went to see Mr. Copeland at Jarvis Walker, Jarvis Walker never sent you anywhere, did they?

A Not to my recollection. We discussed numerous

rkas35 Gatefield - cross

corporations, but usually on the telephone.

Q And you told him you weren't really serious for a job at that particular time?

A I don't remember saying that.

Q Is it possible that you did say that?

A I don't think so.

Q But you are not sure?

A I don't remember saying that.

Q Did you receive any unemployment insurance?

A Yes, I did.

Q When did you start receiving unemployment insurance?

A In July 1975.

Q How much were you receiving --

MR. FERNEY: Your Honor, I would like the jury to be instructed that this is perhaps relevant for some purposes but not for mitigation of damages.

THE COURT: We will come to that at the appropriate time.

MR. LEWIS: Your Honor, I think --

THE COURT: I said we would come to it at the appropriate time, which isn't now.

Q You said before, Miss Gatefield, that you gave the same reasons for leaving to Mr. LoSacco and Miss Donaldson as you gave to the others. Can you tell us exactly

rkas36 Gatefield - cross

what you said to Mr. LoSacco regarding the reasons for your leaving?

A I said that I wanted to go to England for two months and spend some time with my parents and have that time off as a leave from ACT.

Q Did you tell them when you were planning to take that trip?

A Yes.

Q What did you say?

A I told him I was planning to start my leave on Memorial Day.

Q What did you say to Miss Donaldson?

A The same.

Q What did you say, actually, to Miss Donaldson regarding this leave of absence?

A That I was planning to leave on Memorial Day weekend, 1975.

Q Did you say why you were leaving?

A Yes, I did.

Q You told her?

A Yes.

Q Did she say anything to you in response to that?

A Not to my recollection.

Q She didn't say anything about the fact that

rkas37 Gatefield - cross

wasn't the Coins project a conflict with that kind of leave of absence?

A I don't believe so. Miss Donaldson was Mr. Lecht's secretary.

Q Did you tell Mr. LoSacco that your mother was ill when you spoke to him?

A I believe so.

Q You are not sure?

A I have no recollection of the specific occasion but everyone I spoke to I told my mother was ill.

Q Miss Gatefield, you testified concerning Defendant's Exhibit A which was offered before, dated June 1, 1975. The June 1st that appears on this letter is your handwriting, isn't it?

MR. FERNEY: May I ask that he use the original?

Q Is this your handwriting?

A Yes.

Q You wrote this letter before you received Mr. Lecht's letter of June 2, didn't you?

A No.

Q You didn't?

A No.

Q The letter is dated June 1. Mr. Lecht's letter was June 2, is that right?

A Yes.

Q You made a mist ke on June 1st?

A I made a mistake. I made three mistakes in that letter, if you notice.

Q I am asking about June 1st. You made a mistake with regard to the date?

A Yes, I did.

Q And you wrote the letter on June 6?

A Yes.

Q You made a mistake of five days, is that right?

A Yes.

Q That is your testimony, that you made a mistake of five days writing this letter and dating this letter?

A Yes.

Q Do you have a habit of misdating letters?

A No, I don't have a habit of making grammatical errors or spelling mistakes, either.

Q And you were upset at the time you wrote this letter?

A Of course I was.

Q You were upset that you had been terminated by ACT, is that right?

A Yes.

Q At the time you wrote this letter, Miss Gatefield,

you knew, did you not, that Mr. Lecht had asked you not to leave?

A Yes, he asked me not to leave on May 30.

Q And you knew that by leaving, you were going to be countermanding his directions, didn't you?

A It was not a direction. It was a request.

Q In other words, he asked you not to leave?

A He asked me to stay for another week.

Q And he asked you not to leave on May 30 and to be back the following week, isn't that right?

A He did not ask me to be back the following week. He just asked me not to leave as I testified this morning.

Q But you left?

A I did leave.

Q When you wrote this letter you stated in here, you would like the company to arrange for your medical insurance to be continued "during my absence from ACT."

When you received the letter from Mr. Lecht dated June 2, he had terminated you, hadn't he?

A The letter is a termination letter, yes.

Q There is no question you were terminated at that point?

A There was a question in my mind as to whether I was permanently fired.

Q You never called him, did you not?

A No, I did not.

Q You never wrote to him concerning that leave of absence?

A No. I was expecting him to contact me.

Q During the month of June, you looked for a job in London, England, didn't you?

A I spoke to two people in London, yes, concerning employment.

Q So you knew you had been terminated?

A I knew there was a possibility of being terminated and I could not afford to be without a job.

Q You were looking for a job in London in June and you knew you had been terminated?

A I knew I had received a termination letter.

THE COURT: We will take a short recess.

I would like counsel to come into the robing room.

(Recess)

(In open court; jury present)

THE COURT: All right, Mr. Lewis, proceed.

BY MR. LEWIS: (Cont'd.)

Q Miss Gatefield, this contract you allege that exists between you and ACT provides that the employer shall

have the right to terminate this agreement at any time for cause, is that right?

A Yes.

Q On June 2 in Plaintiff's Exhibit 6, Mr. Lecht wrote you a letter and stated -- Exhibit 4: "It is unfortunate that your termination materialized in this way. We cannot condone a staff member unilaterally deciding when and where to take leave."

You did not respond to that, did you?

A No.

Q Did you object to that statement?

MR. FERNEY: Objection.

THE COURT: Sustained.

Q You never expressed any objection regarding that statement --

THE COURT: Sustained. It is the same question.

Q The contract also provides, does it not --

THE COURT: The contract is in evidence. We don't have to have it read every minute.

Q Under this contract after October 31, 1975, the employer could terminate you at will; you understood that, isn't that right?

A With sixty days' notice.

THE COURT: Were you paid for the sixty days

following receipt of the letter?

THE WITNESS: No.

THE COURT: Did you get any notice that you were going to be terminated before you got the June 1st letter?

THE WITNESS: No.

Q You were told by Mr. Lecht that you could not leave on Ma 30?

A I was not told I could not leave.

Q You just testified before that was exactly --

MR. FERNEY: Objection.

THE COURT: She said he asked her to stay.

Did he say if you leave, I will terminate you?

THE WITNESS: No.

THE COURT: Did he say, I have given you sixty days' notice with your contract terminated?

THE WITNESS: No.

Q There was no sixty-day notice at that particular time, was there?

A No, there was not.

Q Had you not been terminated, you would have taken a two-month leave of absence, isn't that right?

A Yes.

Q Without pay?

A Yes.

Q So that you yourself were planning as of May 30 to have two months off without pay during that particular year?

A Yes, I was.

Q You were not relying on compensation for those two months, isn't that right?

A That is right.

Q In connection with this case, you at one time filed an affidavit indicating what you minimum damages were, is that correct? Do you recall signing that affidavit November 14, 1975?

A Yes.

Q And at that time you indicated to the Court that the minimum damages which you should collect from defendant in this suit included item number 5, $25,500 salary from June 1, 1971 through December 31, 1975, and that was the end of that period of time in which you were seeking damages, December 31, 1975, is that right?

A Yes.

Q That was a $25,500 annual rate for salary, it wasn't salary $25,500 from June 1 through December 31?

A No, it was annual salary.

Q June 1 through December 31 was 50 percent of it?

A Seven-twelfths.

Q Do you have intentions to stay in New York?

A At the moment, yes.

Q So this is your permanent residence at this time?

A At this time, yes.

Q How long have you lived in New York?

A None years.

Q And you are on a visa?

A Yes.

Q Does that visa have any restrictions on the type of employment you can perform?

A None at all.

Q So you as an alien -- you are an alien?

A Yes.

Q You can perform services for any company?

A Yes.

Q And you have been in the United States for basically the entire period of your adult life, isn't that correct?

A Yes.

Q And all your professional employment has been in the United States except with Honeywell?

A Yes.

Q And that lasted for how long a period of time?

A '64 to '66. Two years.

Q And you have no present intentions of going back to England?

A Not at the moment.

MR. LEWIS: No further questions.

REDIRECT EXAMINATION

BY MR. FERNEY:

Q You testified that in the letter dated June 1, there were two other mistakes. What were those two other mistakes other than the misdating of the letter?

A One was the spelling of the word "absence" and one was the omission of the verb "be," "to be."

Q You testified that the first phase you were testifying to that the Coins project was $94,000. What do you mean by that? Gross price?

A The price to complete the design phase, design specifications was $94,000 gross.

Q Just before your employment with ACT was terminated, according to ACT's vacation policy, how many weeks of vacation per year were you allowed?

A Three.

THE COURT: Why didn't you take a vacation during the summer preceding this?

THE WITNESS: I had taken a vacation over

December into January.

THE COURT: But you said you were owed three weeks' vacation.

THE WITNESS: For '75. That vacation was for '73 and '74.

THE COURT: Why hadn't you taken that vacation?

THE WITNESS: Because I was working on projects and had not time to take the vacation in the specified years.

THE COURT: Had you been asked to stay in those years?

THE WITNESS: I had been asked to stay on the projects, yes.

Q Had ACT previously ever permitted you a leave of absence without pay?

A Yes.

Q How many times?

A Twice. One was a two-day leave of absence tacked onto the end of my vacation in December, January, 1974 -- '75 and one was a three-week leave of absence in December of '72 when after my grandfather had died, I went to England.

THE COURT: Normal vacations, were they with or without pay?

THE WITNESS: With pay.

THE COURT: Did you get anything extra for

working during your vacation periods in the earlier years?

THE WITNESS: No.

Q Did you get an extra accumulation of vacation pay?

A Vacation --

Q Of vacation time?

A Yes. Vacation time could be carried forward.

THE COURT: Did Mr. Lecht say anything about carrying your vacation forward during this leave of absence?

THE WITNESS: We didn't discuss vacation at all.

THE COURT: Did you seek to have it with pay?

THE WITNESS: No. I asked for leave without pay.

THE COURT: Yet you say you were owed three weeks with pay?

THE WITNESS: Yes, but I wanted to have that vacation pay available later on, perhaps.

THE COURT: It was an election on your part?

THE WITNESS: Yes.

Q Mr. Lewis, when he was cross-examining you, presented you with a project schedule.

As best I remember the substance of the question, this project schedule related to a twelve-week project --

MR. FERNEY: Is there any way we can retrieve

that?

Q As I recall, he stated that your name was on the list of people working on this project.

Did you know this at the time?

A That my name was on there, yes.

Q Did you discuss that fact with anyone at ACT?

A Yes.

Q Who?

A Mark Messinger and Anna Tipton.

Q What did each of them say, respectively?

A They said -- I believe it was at a joint meeting, the three of us were present. The statement was that that was the situation as being presented to the bank. They were a new client and they didn't want to worry them about the fact there was going to be a personnel change and don't worry, my commitment was only for the first milestone which is there I believe on May 23.

Q Mr. Lewis asked you some questions relating to the fact that on occasion there were overruns and phases ran overtime. Was the phase you were working on completed on time?

A It actually overran by three days, but the bank was not aware of this because we delivered the document on the specified morning. That was the morning after Memorial

Day, 1975.

Q What day is that?

A Tuesday, May 26th or 27th. I am not sure.

Q You have testified that Friday was May 30. If it was a Tuesday, what was it, May 27, I believe.

A May 27.

Q If staff people at ACT were asked to work on projects, were they free to refuse to work on that project?

A Yes, they were free to refuse.

Q What is that answer based on?

A It is based on statements made by Mr. Lecht at company meetings, that everyone in the company has a right to refuse a project, though they may be asked to reconsider.

Q Is that a statement he made once?

A No, I heard it more than once.

MR. FERNEY: No further questions, your Honor.

RECROSS-EXAMINATION

BY MR. LEWIS:

Q Where did you hear that statement?

A In staff meetings in ACT. Usually they were held in the library.

Q How many times would you say he made that statement?

A I don't know the number. Over the years I heard

it develop more than once.

Q When was the last time you heard it?

A Sometime in 1975.

Q You have no idea when it actually occurred, though?

A No, I don't.

Q Can you remember the words he said with regard to that aspect?

A Not the precise words. That is a paraphrase that I gave you.

Q Do you remember the context in which he stated it?

A It was usually when he was discussing projects and attitude of management in the company towards the staff when he was given a general company meeting.

Q And he just said that anybody was free to reject a project at any time?

A He didn't say at any time. He said they were free to refuse a project, thought he might well ask them to work on it.

Q And people rejected working on projects?

A I believe so.

Q Do you know of any that did?

A I can't recall any at the moment.

Q Did he ever give you anything in writing with

respect to that?

A No.

Q Did you ever see anything in writing with respect to the right to reject an assignment?

A It was delivered to me personally. It was at a general meeting.

No, I did not.

Q But Mr. Lecht, as you testified, as you understand it, also indicated that if somebody rejected working on a project, he would ask them to reconsider?

A No. He said he might ask them to reconsider.

Q On the Coins project schedule, there were some people that were not specified for working on the job for the entire period of time, is that correct?

A Yes.

Q One of them was not you? You were not one of those persons, right?

A That chart shows me working on the entire project.

Q You have indicated in your resume --

THE COURT: That is repetitive. We have been over that once and once is enough.

MR. LEWIS: One question, your Honor, I don't think I have asked.

Q You were not the manager on this project, though,

were you?

A No.

Q But you indicated in this resume that you were the manager?

A I don't think it indicates precisely what was happening.

Q It states you will manage the design phase, right?

A That is what it states.

Q And the design phase went beyond May 30, did it not?

A Yes.

MR. LEWIS: No further questions.

THE COURT: You are excused.

(Witness excused)

THE COURT: Next witness?

MR. FERNEY: I have no further witnesses.

THE COURT: You rest?

MR. FERNEY: I rest.

MR. LEWIS: Will your Honor entertain motions?

THE COURT: Not at this time. I will hear them later as though made now.

O S C A R H. S C H A C H T E R, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEWIS:

Q Mr. Schachter, are you an officer of the defendant?

A I am.

Q What is your position?

A I am executive vice president of Advanced Computer Techniques Corporation.

Q What are your duties?

A My duties are the financial-legal-administrative overseeing of the company.

Q What kind of business is this company in?

A We are a software house which means that we have groups of technical people, people with technical expertise, who design and implement computer systems. By and large that is our work.

We have a group of subsidiaries who are involved in other kinds of business, most of them related to the computer field.

Q What kind of individual works for your corporation in the main?

A Most of the individuals are highly trained, educated individuals. From time to time there are people without college degrees who have done superlatively in this field, but by and large, they are people with degrees and have professional stature or rank.

Q Is the area in which your corporation performs a rather competitive area?

A It is extremely competitive.

Q Has it been competitive for a substantial period of time?

A Yes. It is a very easy industry to start a business in because basically you have no fixed assets. You have no capital investment. You just need an office and people and you can try to get contracts to design and implement software.

Q How has ACT's performance been in this competitive market?

A The company was formed about fourteen years ago in 1962 and by an large, it has done very well. It saw many competitors fall by the wayside in 1970 and '71, literally hundreds of companies like ours went out of business.

For a period of time there were no new entries. Then starting '74 and '75 many new companies started coming

into the business again as business revived. We have managed to survive two of the years which were very difficult ones, but by and large we have been doing okay.

Q Would you say that your profit record -- you have a profitable record?

A We have been profitable for twelve of our fourteen years of existence.

Q Would you say that that is an exception in this industry?

A It is somewhat unusual in the industry to be profitable for that many years, though the margin of profit is very, very low. The margin of profit ranges between 2 and 3 percent, which is far below that most of the American industry --

THE COURT: How is any of this material?

Q Do you know Miss Gatefield, Mr. Schachter?

A I do.

Q What was Miss Gatefield's position?

A Miss Gatefield, when she first joined the company, was a systems analyst. After a period of time she was made the manager of our World Trade Center activities.

In addition, from time to time she worked on technical projects for the company.

Q Was she a skilled employee?

A She is very skilled.

Q Was she one of your senior employees?

A Yes, she was. At the period '74-'75, she was.

Q Did she have a supervisory responsibility?

A From time to time on a technical project she might have supervisory responsibilities. In the area of the World Trade Center, she was largely doing sales kind of activity and would not be managing other people directly.

Q What was her role on the World Trade Center?

A It was to contact, talk to, both the World Trade Center itself, the Port Authority which ran the World Trade Center and to the tenants in the World Trade Center to try to find opportunities where we might make our services available to those tenants.

Q What projects was she working on in the spring of 1975?

A I believe she had worked, just helped out on a very short project with McCormick Food Company just for a few days and so far as I remember in March of 1975 or toward the end of March, beginning of April, she was not actively on any project. She was pursuing her World Trade Center activities.

Q Did there come a time when your organization entered into a contract with First National City Bank in 1975?

A Yes.

Q What kind of a contract was that?

A It was known by the name of Coins Project. It was a money management system to enable people within the bank and also treasurers of corporations outside the bank to purchase money market instruments to make investments, to buy and sell certificates of deposit and various other

kinds of instruments of that kind.

Q What was the function that was contemplated that ACT would fulfill in that contract?

A Initially, ACT was to design the system, using a functional specification which is a document which tells us what it is the user hopes to have the system do and then if we were successful in designing the project, if we did it presumably in a way the bank liked, they would give us a further contract to implement this particular system.

Q Is that the implementation that has been described earlier by Miss Gatefield?

A Yes.

Q Did you furnish a proposal to First National City Bank?

A Yes, I believe we did.

Q Then they reviewed that proposal?

A Yes.

Q People at the bank?

A Yes.

Q Did they meet with you concerning it?

A Yes, they did.

Q Was this contract that you entered into in the spring of 1979 with First National City Bank a contract that covered anything more than design?

A I assume you meant '75.

Q I meant '75.

A No. The contract we entered into in the spring of 1975 covered the design of this money market system, the Coins system.

Q How long a project was that supposed to be?

A It was to be a 12-week effort.

Q Was this agreed upon between the two parties?

A Yes. Subsequently there was a change and it became a 14-week effort. We cannot finish it within the 12-week period of time or we didn't think we would be able to finish it within 12 weeks.

Q When did you make that change?

A I am not exactly sure because I was out of the country for part of the period. I don't think I was there at that time.

Q At the time that you entered into this project with First National City, were there any other banks using this kind of system?

A So far as I knew, there certainly were no other banks in New York that had a system of this kind or that had designed a system of this kind.

I don't think since the New York banks tend to be the leaders in this area, I don't think there

were any other banks that had done this kind of thing. The only thing might possibly be the Bank of America out on the West Coast but I don't know whether they have done this system or not.

Q You did not have in your possession any specifications or literature regarding systems for other banks?

A No. It was a very innovative kind of system.

Q As far as you knew, this was the first of its kind?

A Yes.

Q Did you discuss with First National City the prospect of ACT performing work beyond the design phase, or this design contract? Was that the implementation you are talking about?

A Yes. Discuss when?

Q Discuss in the spring of 1975.

A We certainly hoped we would be asked to implement the project. We were not discussing that directly with the bank at that point because we had to complete the design first because we could discuss the implementation.

Q In other words, you had established yourself on this design phase?

A Yes.

Q But you understood and you knew that there was

an implementation contract that the First National City Bank was interested in having performed, is that correct?

A Yes. We assumed that, that they would not go through the expense of designing this system without then implementing it.

Q Did Marion Gatefield work on the Coins Project?

A Yes, she did.

Q When was she asked to work on the Coins Project?

A She was asked to work on the Coins Project to the best of my recollection, I think it was April 7th.

Q Do you know who asked her to work on that project?

A I know I spoke to her myself.

I believe it was subsequent to my conversation that Anna Tipton spoke to her about working on the project as well and Mark Messinger had at that time been appointed the project manager and he certainly must have spoken to her as well.

Q What did you say to Miss Gatefield at that time?

A I told Miss Gatefield that we were short of the kind of technical expertise to put this project on the air and to design this kind of a system since it was rather complicated and would she please take part in the project, would she please become a project member.

Q What did she say?

A She said that she would.

Q Did she indicate anything about having to leave this project at any time, the project for which you had entered into a contract with First National City?

A She told me at the time --

Q I am still talking about April 7th or thereabouts.

A She told me at the time I spoke to her that she was hoping to take some time off during the summer and she hoped that this project would not interfere with her taking time off during the summer.

Q What did you say?

A I pointed out to her that the project was due to end at the end of June, that it was a 12-week project and that there would be no reason why this would interfere with her plans to take some time off during the summer.

Q Did she say anything to you in response to that?

A I don't remember any particular response to that conversation, that comment.

Q Did she indicate that she was going to take a leave of absence, or did she just say, to take some time?

A I am quite certain she used the words take some time during the summer and that she did not use the words leave of absence.

Q Did she indicate there was any emergency that

she had?

A No, she did not. If she had had an emergency, she could have gone that day.

THE COURT: Did she tell you her mother was sick?

THE WITNESS: She did not.

THE COURT: What reason did she say for wanting the summer off?

THE WITNESS: She had personal reasons and I didn't press her what those were. We often gave people time off to clear their heads, particularly during the summer if we were slow.

Q This conversation that took place between you and Miss Gatefield, were there any other persons in the room at the time you spoke to her?

A I don't think so. My recollection is that I had a private conversation with her. I don't think there was anyone else in the room. I am not absolutely certain, but that is my recollection.

Q When was the next time you spoke to Miss Gatefield concerning any time off that she was planning to take?

A As I remember it, the next time was shortly after I returned from a trip I made to Iran at the end of April, beginning of May, 1975. I got back from that trip on May 9th and I believe I had a conversation with Miss Gatefield

during the week of May 12th and probably during the early part of that week.

Q What was the occasion for the conversation?

A I had been told that Miss Gatefield was planning to leave on a leave of absence at the end of May and would I please talk to her about the urgency of her commitment to the Coins Project and the fact we could not afford to have her leave at that time.

Q Who told you that?

A I believe it was Anna Tipton.

Q And Miss Tipton's position at ACT was?

A She was general manager of the New York consulting office.

Q Did you ask to see Miss Gatefield at that point?

A Yes, I did.

Q And you did meet with her?

A I met with Miss Gatefield.

Q Did you say anything concerning the news that you had heard from Miss Tipton?

A Yes, I said precisely that. I said I had heard she was planning to leave at the end of May, that I could not understand why she was planning to leave at that point right in the middle of this project which she had committed to and I was sort of very surprised at hearing that

news.

Q What did she say?

A She said she had made some plans and those were her plans.

Q And that is what she said.

Did she say anything beyond that?

A No, I can't recall anything beyond that.

THE COURT: What did you say? Did you forbid her to go?

THE WITNESS: Not at that point, not in that conversation. We have rarely issued direct orders in our company.

THE COURT: We are talking now about things that are direct. That is what this lawsuit is about.

Did you say, "You can't go"?

THE WITNESS: During that conversation, I did not.

THE COURT: What did you say?

THE WITNESS: I said I can't see how you possibly can be planning to go in the middle of this project.

Q Did you discuss this with anybody else at ACT immediately after this conversation?

A Well, I went back and told Miss Tipton, I am quite certain, that I had a conversation with Miss Gatefield and that I had had the conversation I just related and that

it seemed to me that some other people wnated to talk to her as well.

Q Do you know whether anybody else talked to her about that?

A I believe Mr. Lecht spoke to her but precisely when, I am not sure.

Q Did you have occasion to speak with her subsequent to that second conversation, or that first conversation you had in May?

Yes, I did.

Q When was that?

A During the week of -- I believe it was the week of May 19th.

Q Was there any particular reason why you recall that particular week?

A Yes, because Mr. Lecht was in Iran and I called him in Iran and had a long telephone conversation with him about the problem we were experiencing with Miss Gatefield going on leave of absence.

Q This is Defendant's Exhibit F for identification.

Can you identify this exhibit, Mr. Schachter?

A Yes. This is part of our telephone bill showing long distance calls.

Q Is there a call there to Iran?

A Yes, there is.

Q On what date was that?

A May 21st.

Q Is that the call to which you have just referred?

A Yes, I believe that is the call.

MR. LEWIS: I would like to offer this as Defendant's Exhibit F.

THE COURT: It is received.

(Defendant's Exhibit F received in evidence.)

xx

Q Where did you have this conversation?

A I believe I was in Mr. Lecht's office.

Q Was he there?

A No, he was in Iran. I believe I took the call in his office.

Q Was anyone else there?

A Miss Tipton may have been present. I believe she was but I am not 100 per cent certain.

Q Did the subject of Miss Gatefield's time off come up?

A Yes. It was the express purpose of my call at that point.

Q In this conversation with Mr. Lecht, what did Mr. Lecht say to you about Miss Gatefield?

A He said that he had had a prior conversation with her in which he had told her that -- well, I am not sure whether he said that or it was the following week.

MR. FERNEY: Objection.

THE COURT: Sustained.

Q What did you say to Miss Gatefield in this conversation you had in Mr. Lecht's office?

A I went to her office and had a second conversation with her about her going on a leave of absence and I told her she could not leave.

Q What did she say?

A She said that she had her options open to her and if she wanted to, she would leave.

Q What did you say?

A I said that we also had options then of terminating her employment.

Q Did she say anything to you in response?

A No.

Q Did she leave the room at that time?

A No, I left the room. It was in her room that we had this conversation, as I remember.

Q And nothing else was said at that time?

A That ended the conversation.

Q Did you speak to anyone else at ACT following this conversation regarding Miss Gatefield's proposed

leave of absence?

A I told Mr. Lecht about our conversation. I believe I told Miss Tipton about our conversation.

Q Did you have any further conversations with Miss Gatefield regarding this subject?

A I don't think so.

Q Were you ever advised that Miss Gatefield had been terminated by Mr. Lecht?

A Yes.

Q When was that?

A That was on -- I believe on June 2nd.

Q Do you recall approximately when it was on June 2nd?

A I believe it was the morning of June 2nd.

Q Were there any other developments in connection with the Coins Project that took place in the week of May 26, 1975 that you knew about at that time?

A I had heard that we had hired a man by the name of George Rosen who was to work on the project. I heard on the morning of June 2nd when I came into the office that Mr. Rosen had left our employ after two days with the company.

Q Had you hired Mr. Rosen?

A No, I had not hired Mr. Rosen.

Q Do you know who hired him?

A I believe Miss Tipton hired Mr. Rosen. He was recommended by Mr. Messinger and hired by Miss Tipton.

Q Was Mr. Messinger with the company on June 2nd?

A Yes, he was. He submitted his resignation on that day, but he was with the company.

Q How long did he stay with the company?

A He stayed with the company until approximately the end of July.

Q Did Mr. Lecht discuss with you on June 2nd Miss Gatefield's departure?

A Yes, he did.

Q What did he say to you?

MR. FERNEY: I object.

THE COURT: Sustained.

Q What did you say to him, Mr. Schachter?

A I am trying to think of the question.

THE COURT: What did you tell him?

Q About Miss Gatefield's departure, if anything?

A I told him nothing until he said something to me.

Q What did you say?

A I said that I agreed with his decision.

Q Mr. Schachter, your company has in a counterclaim sued Marion Gatefield, is that correct?

A Yes, we have.

Q What is the basis of your claim in terms of damages? What damages have you suffered?

A There are a number of elements of the damage we suffered. We were forced to take one of our other managers who managed a time sharing division --

MR. FERNEY: Your Honor, may I ask that any evidence relating to loss of profits not be admitted.

THE COURT: Overruled.

A We took Mr. Harvey Kappel, the manager of our time sharing division and moved him over to become the assistant manager on this project to replace Miss Gatefield.

Q Can you explain to the jury and to his Honor how you were damaged when you moved him over?

A Yes. Mr. Kappel had been running a profitable division in the company, but because of the importance of this job and the fact that he had previously, his division had previously performed some small contracts for the First National City Bank and the people at the bank knew him, we felt that he would be most apt in view of the series of events that occurred with people leaving; that he would be most apt to fill the gap in a way that would give the bank confidence that we could continue and finish the job.

So, we took him off the managership of his division.

It took us about a month to relieve him of his duties and put him in charge, put him as second in charge to Mr. Messinger on this project.

The division had been sustaining a profit for the months of April, May, June and July. July being the first month he was off but there was a carryover of work from his sales efforts.

During the months of August, September and October, his division sustained a loss because no one was really selling for that division.

On October 15th we found a replacement from outside the company for Mr. Kappel running that division and starting in November and December, the division picked up again and started operating at a profit.

The division went from a swing of about 11,000 in profits during the first four months of our fiscal year, which starts April 1st, to a loss of about $11,000 during the three months that I am talking about.

So the net effect to the company was a loss of $22,000.

Q Can you identify Defendant's Exhibit G?

A Yes. That is a computer run that we have showing the profit and loss of our various divisions. This is one for the advance time sharing applications division for the

period April through February, 19 -- April '75 through February of 1976.

Q Does that exhibit identify any of what you have just testified to?

A Yes. It shows the profit for the first four months of the year and then the loss for the next three months of the year.

THE COURT: We will adjourn now for the day until tomorrow at 10:00 o'clock.

Don't talk about the case, don't anybody talk about it with you, either.

10:00 o'clock tomorrow, come right into the jury room.

(Adjourned to April 14, 1976 at 10:00 a.m.)

WITNESS INDEX

Name	Direct	Cross	Redirect	Recross
Marian Gatefield	2	52	96	100
Oscar H. Schachter	104			

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Marian Gatefield
v.
Advanced Computer Techniques
Corporation

April 14, 1976,
10:45 A.M.

(Trial resumed)

--

(Jury present.)

O S C A R S C H A C H T E R, resumed.

THE COURT: You are still under oath, Mr. Schachter.

DIRECT EXAMINATION CONTINUED

BY MR. LEWIS:

Q Mr. Schachter, yesterday when we were at the close of testimony you were describing damages that your company suffered as a result of Miss Gatefield's departure.

You described Mr. Cappell's relationship with the company. Could you just describe again how you suffered as a result of this departure?

A Mr. Cappell was manager of the Time Sharing Division of the company. We were forced to remove him from the management of that division and move him on to the Coins project.

I explained that he was known to the bank, that they had confidence in him and we felt that with Miss Gatefield's departure that --

THE COURT: When did you do this?

THE WITNESS: I talked to Mr. Cappell mid-June and he completely involved himself July 1st.

THE COURT: When?

THE WITNESS: The end of June, July 1st.

THE COURT: That is when you talked?

THE WITNESS: We talked in the middle of June.

THE COURT: What do you mean by the middle?

THE WITNESS: About June 15th.

THE COURT: After you voluntarily terminated the plaintiff?

THE WITNESS: We had terminated the plaintiff at that point, yes.

THE COURT: Did you at any time ask the plaintiff to come back?

THE WITNESS: I did not, no, sir.

Q Other than what you described yesterday with regard to ACT, did the company suffer other damage?

A Yes.

Q In what respect?

A We had to replace Mr. Cappell as manager of the Advance Time Sharing Division with another man whose salary was greater than Mr. Cappell's.

We replaced Mr. Cappell at the end of October,

took us that long to find someone to run that division on a full-time basis.

We replaced him with Alex Bernstein whose salary exceeded that of Mr. Cappell at the time he was manager of the Time Sharing Division and the amount of damages I remember is about $875 for the three months involved.

Q Mr. Schachter, can you identify this exhibit?

A Yes, that is Mr. Bernstein's employment salary record.

Q Who keeps these records?

A Those records were kept by the Financial Division.

THE COURT: Do I understand that Mr. Bernstein was not hired to replace the plaintiff but somebody else?

THE WITNESS: To replace Mr. Cappell when we were forced to take Mr. Cappell off his then assigned duties and transfer him to the Coins project.

THE COURT: Did Mr. Cappell replace the plaintiff?

THE WITNESS: Yes.

MR. LEWIS: I offer this in evidence, your Honor.

MR. FERNEY: No objection.

THE COURT: Received.

xx (Defendant's Exhibit J received in evidence.)

Q Can you identify Defendant's Exhibit I?

A That is a similar record which we maintained for Mr. Cappell showing his salary and salary changes.

MR. LEWIS: I offer this in evidence as Defendant's Exhibit I.

MR. FERNEY: No objection.

THE COURT: Received.

(Defendant's Exhibit I received in evidence.)

Q Were there any other damages suffered by ACT?

A Yes. We had to replace Miss Gatefield at the World Trade Center and in that regard we suffered two kinds of damages.

Firstly, we sent someone on a trip to Zaire, a trip which we had not planned to send anyone on, not planned to send Miss Gatefield on.

And we were forced, because all the World Trade Center people would be there, and we had to maintain the relationship with that client and we were forced to send Mr. John Timmons to that World Trade Center convention so that he would be able to meet people from the World Trade Center and have some continuity of the business relationship.

We had been doing business them five years and couldn't countenance an abrupt stoppage in our relationship.

Q Can you identify Defendant's Exhibit H?

A Yes. Those are the expense reports prepared by Mr. Timmons covering his trip to Zaire to attend the World Trade Center convention.

Q Is this a copy of the record that was made by your company?

A Yes, made by Mr. Timmons for our company for reimbursement.

THE COURT: You didn't plan to send Miss Gatefield there?

THE WITNESS: No.

THE COURT: How could you possibly claim damages in sending somebody else?

THE WITNESS: She had worked for the World Trade Center five years and there had been no break in the relationship. Now suddenly --

THE COURT: How would going to Zaire help? The World Trade Center is here on Hudson Street?

THE WITNESS: There was a conference there at which you meet them.

THE COURT: That is plainly out of bounds. I exclude it as an item of damages as a matter of law.

MR. LEWIS: May I argue this point?

THE COURT: You can argue it after we hear

what the jury has to say. Go ahead.

MR. LEWIS: Are you excluding Defendant's Exhibit H?

THE COURT: It is received, there is no objection.

xxx (Defendant's Exhibit H received in evidence.)

Q Were there any other damages that your company suffered?

A Yes, we had to have Mr. Timmons learn for a period of approximately six months, to meet the people at the World Trade Center, to meet the potential clients at the World Trade Center and to find out what Miss Gatefield had been doing over a period of four years down there; to learn about the system we built at the World Trade Center and to just maintain the continuity of the relationship with the World Trade Center, to start maintaining it down there.

We estimate over this six months period of time it took him to learn that, we spent about 50 percent of his time on those efforts and using the salary at the time plus our overheard I believe we calculate about $1,800 as our damages on that. The time would not have been spent by anyone had Miss Gatefield remained with the company.

Q Can you identify Defendant's Exhibit M?

A Yes, this is Mr. Timmons' salary record.

Q What does it show, what salary?

A The salary during that period of time was $27,500.

Q Can you identify Defendant's Exhibit L?

A Yes. This is our approved overhead rates as determined by the federal government.

Q Can you explain how you calculated this amount of $1,800?

A We calculated it based on Mr. Timmons' salary for six months plus the approved government overhead on that salary.

Q What is that overhead?

A 117 percent on overhead and --

THE COURT: You have that anyway, don't you? Your overhead goes on whether Miss Gatefield was there or not,isn't that so?

THE WITNESS: But each of the people is costed out.

THE COURT: You have the overhead there anyway.

THE WITNESS: We can say it doesn't apply to every person.

THE COURT: You may cost it out but that doesn't make it an item of actual damage.

Q Is this a basis for your getting compensated by the government?

A Yes, this is the basis for compensation by the government.

Q You get compensated on overhead?

A Salary.

Q For each of the individuals that work on this project?

A Yes. We calculate the salary for the period of time, six months, plus the overhead and then divide that in half because we figure that he spent about 50 percent of his time in learning this process.

MR. LEWIS: I offer Exhibits L and M.

MR. FERNEY: Objection.

THE COURT: Sustained. I will entertain a motion to strike the evidence on anything other than the cost of the replacement of the plaintiff.

MR. FERNEY: I so move.

THE COURT: Strike it all out. Your damages are limited in law to the cost of obtaining equivalent services, not loss of profits or general damages. That is it. Next question.

MR. LEWIS: May I speak on this question of law?

THE COURT: No. I have examined it and studied it and that is it. I have read the briefs.

MR. LEWIS: There were the consequential damages--

THE COURT: You are not entitled to them under the law. Proceed.

Q Were there any other damages that your company suffered?

A Yes, we were forced to expend additional manpower for the Coins project.

MR. FERNEY: Objection.

THE COURT: Sustained.

MR. LEWIS: Your Honor, an employee left this company --

THE COURT: I understand what happened, I heard the evidence. I have ruled on it. If you don't like it there is another court. Proceed here.

You can make your record and put your question.

Q Were there any other damages -- what other damages were suffered by your company?

A After concluding with Mr. --

MR. FERNEY: I am sorry, I don't understand. I object.

THE COURT: Sustained.

MR. FERNEY: Do I understand your Honor is striking all of the testimony about the counterclaim?

THE COURT: Except the cost of replacing this employee.

Q In view of Judge MacMahon's ruling, Mr. Schachter, could you describe the cost of replacing Miss Gatefield on this job?

THE COURT: He has already done so.

A Mr. Cappell's replacement of her was damage we suffered as a result of replacing her with Mr. Cappell.

Q How much were they?

A $21,000.

THE COURT: For what? I don't understand it. Explain to me how you arrive at that figure on the blackboard. There is a blackboard and you can do that.

THE WITNESS: Our fiscal year starts on April 1st--

THE COURT: Now, I am not concerned with that. I want to know and tell the jury when you hired the person to replace Miss Gatefield and how much you paid that person, what that person's salary was.

THE WITNESS: We are talking about a present employee of the company, Mr. Cappell, and we replaced Miss Gatefield with Mr. Cappell.

THE COURT: He was already your employee?

THE WITNESS: Yes.

THE COURT: Did you in any way increase his salary?

THE WITNESS: Within the next few mnths.

THE COURT: Beyond what you were paying Miss

Gatefield?

THE WITNESS: May I have her salary sheet?

At the time of his replacement Mr. Cappell was making less money than Miss Gatefield was.

THE COURT: You suffered no loss at that point.

THE WITNESS: We suffered a loss because we took Mr. Cappell off a vital job in the company and --

THE COURT: You don't seem to understand. All you are entitled to is the cost of getting equivalent service.

THE WITNESS: The cost of getting equivalent service, the fact that the division that this man was heading took an immediate nose dive --

THE COURT: How much was it going to cost to hire somebody else to do the job?

THE WITNESS: There was no one else we could find.

THE COURT: Did you hire somebody else to do the job yes or no?

THE WITNESS: No.

Q Did it increase the cost to your company of performing the work when Miss Gatefield left?

MR. FERNEY: Objection.

THE COURT: Sustained.

MR. LEWIS: Your Honor is not entertaining any

argument on the ruling?

THE COURT: No. That is not to say I haven't read your briefs, I have.

Q Was there any time during the course of your relationship with Miss Gatefield in which the subject of an employment agreement came up?

A Yes.

Q When did that occur?

A I believe that was at the end of 1972.

Q What was the occasion for that discussion?

A Mr. Lecht asked me to prepare an employment contract for Miss Gatefield.

Q Did you do so?

A I prepared an employment contract for Miss Gatefield.

Q What did you do with it?

A I had Mr. Lecht sign it and I then gave it to Miss Gatefield approximately -- either the end of 1972 or the beginning of 1973. I am not quite sure of the date. Shortly after Mr. Lecht asked me to prepare it.

Q Where did you give it to her?

A I believe I gave it to her in her office. I gave her two copies of the agreement and kept an unsigned copy for my file.

Q When you speak about copies, was there an original typed version of this contract?

A No. The original typed version was really a form. It was a standard kind of contract that we used for a number of employees in the company and we had left out the name of the employee and the amount of salary, things of that kind, and the date of the inception of the contract, date of increase and generally fill in that information.

To the best of my recollection that is what I did with Miss Gatefield's contract, and gave her two copies of the contract signed by Mr. Lecht.

Q Did she say anything to you?

A She said she would want to think about it. She wanted to read the contract and think about it.

Q Did she sign it?

THE COURT: What did you say when she said she wanted to think about it?

THE WITNESS: I don't feel handing someone a piece of paper --

THE COURT: What did you say?

THE WITNESS: I said fine, go ahead and read it.

Q Did she sign it?

A She did not sign it.

Q When was the next occasion on which anything concerning Miss Gatefield's employment contract came up?

A I believe Mr. Lecht asked me whether Miss Gatefield returned her contract to me.

Q Had she?

A She had not.

Q What did you say to him?

A I said no she hadn't and I will talk to her about it.

Q When did that occur?

A I believe it was some time in the summer of fall of 1973.

Q Did you speak to her?

A I did.

Q Where was that?

A I believe again in her office though I can't be sure. It may have been my office.

Q What did you say to her?

A I said "Do you want to return your contract to me, sign your contract."

THE COURT: This is the summer or fall of --

THE WITNESS: Of 1973.

Q What did she say to you?

A She said she could not find her contract and

would I get her some other copies.

Q What did you say?

A I said, "Fine, I will get some other copies of the contract."

Q Did you do that?

A I did that. I took the copy in my file, made another copy of it and this time gave her two unsigned copies of the contract.

Q She accepted them?

A Yes.

Q Did you say anything to her?

A Said when are we going to get them signed and she said she wanted to look at them and get back to me.

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THE COURT: When you say accepted do you mean--

THE WITNESS: Took the piece of paper.

THE COURT: Not that she accepted the contract?

THE WITNESS: Took the piece of paper from my hand.

Q Did she say anything to you other than what you just described?

A Other than what I just described, I don't believe so.

THE COURT: Did you say anything further when she said she wanted to look at it? What did you say?

THE WITNESS: I just said fine. I don't think I

said anything else.

THE COURT: That is when now?

THE WITNESS: That was in 1973 I believe, in the summer or fall of 1973.

THE COURT: Summer or fall of 1973, all right.

Q Did she sign any contract copy at that time?

A No, she did not.

Q Did you ever speak to her concerning this matter subsequent to this time?

A I don't remember exactly. It seems to me Mr. Lecht asked me at least on one more occasion whether Miss Gatefield returned her contract and that I spoke to Mr. Gatefield about it and she didn't have them and, you know, wasn't very definitive about whether she was going to return them or not and I didn't press her and she did not give them back to me.

Q Did she ever return to you any copy signed by her?

A Not to my knowledge.

Q Did she ever tell you that she had signed a copy?

A No.

Q Do you know whether she ever returned to any ACT officer, a copy, signed copy?

A My secretary did not get a signed copy back. I looked in my file. There was no signed copy in my file.

Q And you don't remember ever hearing anybody say they had received a signed copy?

A No.

Q You are familiar with that contract, is that correct?

A Yes, I am.

Q Is there a provision on termination --

THE COURT: What contract are we talking about?

MR. LEWIS: Exhibit 3. The contract that is alleged by Ms. Gatefield to be an employment contract between her and ACT. It is marked as Plaintiff's Exhibit 3.

THE COURT: All right.

Q Is there a provision in that contract for termination?

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A There are two provisions --

THE COURT: Do you concede that is a written employment contract?

MR. LEWIS: No. I have to say, your Honor, thisis the contract that is alleged to be a contract between Ms. Gatefield --

THE COURT: Show it to the witness, please.

Do you recognize the signatures on that contract, Exhibit 3?

THE WITNESS: Yes.

THE COURT: Whose signatures are they?

THE WITNESS: Mr. Lecht's signature and Ms. Gatefield's.

Q Did you ever receive that contract or a copy of that contract that you are holding prior to the beginning of this litigation?

A I did not.

Q Do you know whether anybody at ACT received back --

THE COURT: Sustained.

Q Does this contract provide --

THE COURT: Sustained. It speaks for itself.

Q What was Ms. Gatefield's salary for 1975?

A I believe it was $23,000.

Q Are leaves of absence taken by employees of ACT without pay?

A Yes. An emergency leave is very often taken with pay.

MR. FERNEY: Move that be stricken.

THE COURT: Yes, strike it out.

Don't volunteer.

Q Generally speaking, though, leaves of absence are without pay in ACT?

A Yes.

Q And on a monthly basis, what was Ms. Gatefield's salary, approximately?

A About $1,925.

Q Are you familiar with Defendants Exhibit P for identification?

A Yes, I am.

Q What is that?

A That is a letter dated April 8, 1975, which was sent by Miss Anna Tipton, general manager of the ACT New York office to Mr. John Elliot, First National City Bank, regarding the Coins project.

Q And it contains a project schedule?

A And a project schedule.

Q Was that the project schedule that was in effect

as far as you knew in April of 1975?

A Yes.

Q And Ms. Gatefield's name appears on that schedule?

A Yes.

MR. LEWIS: I offer this in evidence, Defendant's Exhibit P.

MR. FERNEY: Is this the document you cross examined plaintiff on yesterday?

MR. LEWIS: Yes.

MR. FERNEY: It is not an original document, your Honor.

MR. LEWIS: We don't have the original. This was sent to First National City Bank. All we have is a copy.

MR. FERNEY: It is not a signed copy.

THE COURT: Secondary evidence.

MR. LEWIS: Your Honor, between the two attorneys we have had no objections whatsoever on the best evidence --

THE COURT: Please. Either it is in admissible form or it is not.

MR. LEWIS: The two of us agreed --

THE COURT: Did you agree?

MR. FERNEY: Your Honor, we had an agreement there would be no exchange of subpoenas. You make an

agreement over the telephone and I did not intend my agreement to apply to something in possession of another person.

THE COURT: Have you seen this document before?

MR. FERNEY: I had seen it before.

THE COURT: Do you have any real reason to question its authenticity?

MR. FERNEY: Let me converse with my client on that.

MR. LEWIS: Your Honor, she testified yesterday--

THE COURT: Please.

MR. FERNEY: I withdraw my objection.

THE COURT: All right, it is received.

(Defendant's Exhibit P was received in evidence.)

MR. LEWIS: No further questions.

THE COURT: Can counsel come up for a moment?

(Discussion held off the record.)

CROSS EXAMINATION

BY MR. FERNEY:

Q Mr. Schachter, on June 2, 1975, were there a number of meetings concerning the Coins project at ACT?

A I remember a meeting that I attended in the morning. Other than that, I am not sure whether there were other meetings. I presume there were.

Q What was the purpose of that meeting?

A The meeting I had in the morning was with Mr. Lecht at which we discussed the fact that Mr. Messinger had resigned and that Ms. Gatefield was being terminated and what we were going to do to handle the problem in terms of completion of the project with the bank.

Q Did you also discuss Mr. Rosen not having come to work that day?

A It seems to me I was told that Mr. Rosen had left the employ of the company when I came in that morning. I wasn't there all day on Friday, but when I came in on Monday morning, that was an incidental piece of information passed on to me that Mr. Rosen had quit. Well, he had joined us two days earlier.

Q So the subject matter of this meeting included both Mr. Messinger and Ms. Gatefield?

A It did.

Q When did you learn Mr. Messinger had resigned?

A That morning. He gave me a copy of his resignation letter.

Q Did you have any discussion with Mr. Messinger about it that day?

A That day, yes.

Q Did you and Mr. Lecht discuss the possibility of

picking up the telephone and calling Ms. Gatefield in England or wherever she was, and ask her to come back?

A I don't remember discussing that with Mr. Lecht. She had left and she had countermanded a direct order.

MR. FERNEY: Move it be stricken.

THE COURT: STrike it out.

Please, don't volunteer, Mr. Schachter. You are a lawyer, you should know what that means when I tell you once not to volunteer.

THE WITNESS: Okay.

Q Did you discuss the possibility of terminating Ms. Gatefield at that meeting with Mr. Lecht?

A Yes.

Q What did he say about it?

A Mr. Lecht had decided to terminate Ms. Gatefield.

Q Answer my question, please. What did he say about it?

A That is precisely what he said. He said he had decided to terminate Ms. Gatefield.

Q Is that all he said about it?

A No, he said it was a very difficult decision. He had thought about it on the weekend.

Q Did you discuss the effect of this on the Coins project?

A We discussed the effect --

Q The combination of all these events, Mr. Rosen, Mr. Messinger, Ms. Gatefiled?

A Mr. Rosen wasn't really a matter of concern to us. He had been with the company for two days and not formally on the project. The matter of concern was Ms. Gatefield and Mr. Messinger. So we did discuss that, yes. It was a matter of concern to us.

Q Yes it was decided to terminate Ms. Gatefield?

A We were running a company --

Q Excuse me, please answer the question.

A Yes.

MR. LEWIS: The question invited an answer like that.

THE COURT: It did not.

When you judge the credibility of a witness, one of the things you should consider is whether he gives responsive answers to direct questions or whether his answers are evasive or vcluntary.

Q You stated Mark Messinger gave you a copy of a letter. Who was the original addressed to?

A I believe the original was addressed to Mr. Lecht.

Q In your direct testimony yesterday afternoon, I believe you testified to the effect that you had a

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conversation with Marion Gatefield, I believe, during the next to last week in May in which you stated something to the effect that well, "You have your option and I have my option, or we have our options," something to that effect?

A Yes.

Q It would have been possible, would it not, for you to have delivered a letter to Ms. Gatefield if you were really threatening to fire her?

MR. LEWIS: Objection.

THE COURT: Can I have the question?

(Question read.)

THE COURT: I will sustain an objection to the form of the question.

Q You are an attorney?

A Yes, I am.

Q And you handle the legal affairs of ACT, don't you?

A Yes, I do.

Q Did you consider drafting a letter to put in writing what you had told Ms. Gatefield?

A No, I did not.

Q Did you write any such letter?

A No, I did not.

Q When Mr. Lecht is not in the country, isn't it

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true you are the acting president?

A I don't have that title, but I act in his place when he is absent from the country, yes.

Q In your testimony yesterday , you stated when you had your initial conversation -- well, in testifying concerning your initial conversation with Ms. Gatefield, which I believe took place according to your testimony on April 7, 1975, you said that you seemed to make some distinction between a leave of absence and taking time off.

You will not say you had given her leave of absence --

THE COURT: Please, would you ask questions and please stop making these speeches?

MR. FERNEY: I am sorry, your Honor.

Q Do you draw any distinction between taking time off and taking a leave of absence?

A Taking time off might be a combination of vacation and some additional time off. The additional time off would be a leave of absence.

Q In your examination yesterday, you testified to the cost of a phone call to Iran as part of your counter-claim damages. This phone call occurred before Ms. Gatefield termination, is that true?

A Yes.

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MR. FERNEY: No further questions.

MR. LEWIS: No questions, your Honor.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Next witness.

MR. LEWIS: May I have about a half a minute?

THE COURT: All right.

(Pause.)

MR. LEWIS: Mr. Lecht.

C H A R L E S P. L E C H T, called as a witness on behalf of the defendant, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEWIS:

Q Mr. Lecht, are you an officer of ACT?

A Yes, I am.

Q What is your position?

A President and chairman of the board.

Q Were you one of the founders of this company?

A Yes, sir.

Q Are you familiar with the plaintiff, Marian Gatefield?

A Yes, I am.

Q Was she an employee of yours?

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A Yes she was.

Q In the spring of 1975, was she working on projects for your company?

A That is correct.

Q Which projects?

A The Coins project.

Q Were you familiar with what was going on in the Coins project?

A To a certain extent, yes.

Q Was it a major project of your company?

A Yes, it was.

Q Was there competition for that project?

A There was deep competition for the project.

Q Who were the competitors?

A I don't know if I know them all, but the Honeywell Company --

MR. FERNEY: Your Honor, I think this is irrelvant.

THE COURT: No, I don't think so.

A The Honeywell Company, 1.5 billion dollar company. Infamatics, 20 to 30 million. They were two competitors.

Q In this competition, did you beat this competition for that project?

A Yes.

Q That was the Coins project you are speaking of?

A Yes.

Q Did there come a time when you were asked whether Ms. Gatefield could work on Coins?

A That is correct.

Q Who was the person who asked?

A Ms. Tipton.

Q What did you say?

A I said "That is fine."

Q Did she say anything else further to you regarding that?

A She expressed pleasure and left the office to discuss it, apparently.

Q Did there come a time when you first learned that Marian Gatefield was interested in taking a leave or time off?

A Yes.

Q When was that?

A Approximately mid-May, 1975.

Q Where did that meeting take place?

A I was stopped by Mr. Schachter and Ms. Tipton and asked to speak with Ms. Gatefield in the hall of our company.

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Q What did they say to you?

A They said they both had ordered her not to take leave, to go on a leave of absence.

MR. FERNEY: Objection.

THE COURT: Sustained.

Strike it out.

The question plainly called for hearsay. You must be more prompt with your objections.

Q In connection with this meeting, did you take any action?

A Yes, I did.

Q What did you do?

A I saw Ms. Gatefield in the company and asked her to have a meeting with me.

Q Approximately when did this take place in connection with this meeting you had with Ms. Tipton and Mr. Schachter?

A Within a day or so, I would say.

Q Shortly thereafter?

A Yes.

Q Did you have a meeting with Ms. Gatefield?

A That is correct.

Q Did she talk to you about the leave of absence?

A Yes, she did.

Q What did she say?

A I actually opened the meeting.

Q What did you say?

A I said "I understand that you are going -- you are asking for a leave of absence prior to the completion of the first phase of this work; is that true?"

THE COURT: What did she say? Give the conversation.

THE WITNESS: I said to her, "I understand you are asking for a leave of absence prior to the completion of your duties on this job."

She was evasive with her answer --

THE COURT: No, not your thoughts. What was said. Just pretend you were a tape recorder. What did you say, what did she say and play it back to us.

THE WITNESS: I will try to do that, your Honor.

A She said that she wanted a leave of absence and I said, "Marian, you are too important to this job to take a leave of absence prior to at least completion of its first phase. We might consider one at some future time, but I cannot agree to a leave of absence at this moment."

Her answer back was, "Well, I really want to discuss a salary increase with you."

Q Did you do so?

THE COURT: Please, let him give us the conversation.

THE WITNESS: I was taken aback, because I didn't --

MR. FERNEY: Objection.

Q Just the words.

A I said to Ms. Gatefield, "I cannot possibly discuss a salary increase at this moment when I am asking you another topic. I would like the other topic to be completed, then we could discuss a salary increase. Up to this moment there has never been a mention of one by you."

She turned around and smiled and said to me, "All right," and we discussed her going.

I said "I absolutely, without qualification, do not give you authorization to take a leave of absence from this company." I said, "I want your word. You are a senior member of the company, you are important to the project, you are very important to other activities after this project. I want your word that you will abide by my request that you do not go unilaterally or on your own desire for a leave of absence, without completion of your duties."

Her answer back was, "All right." She said, "All right."

Then she said "What about the salary increase?"

I looked at her and I said, "Well are you due for one, because I cannot keep salaries of every person in the company in my mind."

She said, "yes," like that.

I said, "All right, what do you think would be fair?"

I converse with our staff on these matters and she just looked at me and said "That is your prerogative," and I suggested a salary increase of $2,500 on her salary. She looked at me and said "That is unacceptable."

I looked at her and said to her, "That is a fantastic increase. It is one of the best our company has given anyone. I just don't understand your reaction."

It would have brought her salary, I believe to $25,000 a year, or thereabouts.

She said, "Well, I still don't accept it."

And I said, "Marian"-- we called one another by our first names there -- "I am going to the Mid East. I have to go to Iran on this weekend." This was on a Friday, May 16th. "You think about that increase, I will think about that increase and when I return, I promise to have a discussion with you about it again, although I don't understand why it is not acceptable."

She said, "Fine." I said "Fine." And she started

to exit towards the door.

I looked back up at her and said, "Marian, on the other topic, the one for which I called this meeting, I would like to ask, I want to confirm what your intentions are, I want you to confirm them to me. You will stay here until I authorize your going?"

She is a human being.. I could order her, but I thought talking first --

Q Just the words.

A She said, "I confirm, I will do that. You think about the salary increase, I will think about the salary increase and when you get back from Iran, we will discuss it." And that finished the conversation.

Q You mentioned the first phase. What was it?

A It was the development of a design specification for a computerized system our company was making for the First National City Bank.

Q Was it your understanding she was to be on that project for the entire period of time?

A Completely through the first phase of that work.

Q When was the next occasion that you had to discuss Ms. Gatefield's time off or leave of absence?

A I was in Iran.

Q Were you there on business?

A Yes, I was there on business. We worked for the military there.

Q Tell us what happened.

A I was in my hotel room and I received a call from Mr. Schachter --

MR. FERNEY: Objection -- go ahead.

THE COURT: I can't hear you.

MR. FERNEY: I am sorry, your Honor. I am objecting to any conversation with Mr. Schachter.

THE COURT: Sustained.

Q You had a conversation in Iran concerning this, is that correct?

A Yes.

Q And did it concern this leave of absence?

A That is correct.

Q As a result of that telephone call, did you tell Mr. Schachter to do anything with respect to Marian Gatefield?

A I told Mr. Schachter without reservation and with no qualifications, that I absolutely oppose her leave, I do not authorize it, she will be acting in violation of her agreement, that I may fire her if she keeps perpetuating this brinksmanship with our company and to tell her that and I would be happy to discuss it with her when I returned from

Iran.

Q When was the next occasion which you discussed the leave of absence or time off?

A The next occasion was in my office in New York City.

Q Who did you discuss it with?

A Ms. Gatefield.

Q Do you recall approximately when that conversation took place?

A I believe since that Monday was Memorial Day, that it was Tuesday of that week. That would have been the Tuesday of the week before the 30th, the Friday of the 30th.

Q What did you say to her at the meeting? Did you call the meeting?

A I called the meeting.

Q What did you say?

A I brought her in and said to her, "I have been told over the telephone that you have in fact decided that you are going to leave this company and go on leave without my authorization at the end of this week; is that true?"

Her answer was, "yes."

I looked up at her and I said, "You made a pledge to me when I left that you would honor your obligations and

you would not take leave of absence without my approval."

Ms. Gatefield reported to me administratively in the company.

She said "That's too bad," just likethat. She said, "I am going to go."

I looked at her. I found it incredulous --

Q Just the words.

A I looked at her. I said, "You know, this is extremely important work for our company. You promised you would stay on this problem. Can you give me a reason, some ameliorating reason why you feel you must go at this minute, Friday?"

She said she was going to leave on Saturday evening, the 31st of May. She was going to leave the company Friday night and the plane to London Saturday evening on the 31st. She said "No."

I said, "According to our policies in this company, we try in the best possible way to try" -- "to extend human courtesy to a person. If there is somebody ill in your family, if there is somebody"-- even if there was like a real crisis somewhere in her family that I may not have believed, but she believed was a crisis, I could then in my conscience say, well, there is a crisis, this woman believes there is a crisis, and I would have let her go

immediately.

Q Did she say anything to you?

A Her response back, "I am not going to tell you why I want to go on leave. It is personal."

Q Had she discussed with you prior to that time any reasons for a leave of absence?

A She never discussed with me this leave of absence prior to the 16th of May, at all.

Q Was there any other conversation on that day, approximately May 26th?

A I talked with her. I searched for some reason maybe since her behavior was so contradictory --

THE COURT: Strike it out. Let the jury decide whether her behavior was contradictory, based on the words.

THE WITNESS: Yes, sir.

A I said to her, I reiterated this over and over again, can you give me some reason, some cause, and she said no.

I said, "Marian, if you go on this leave of absence alone and without my approval, I will have to take action against you."

She said to me, "I don't care. In fact, it may be permanent." Those were the words.

I was shocked -- I am sorry.

I said to her, "I guess that terminates the conversation. Would you please think about it tomorrow? We will discuss it again or come back to me with your thoughts."

She said she would think about it and I said fine, and that was the end of the conversation.

Q Did you have other occasions to speak to her that week?

A Yes.

Q Regarding this matter?

A Yes.

Q What was the next occasion?

A The next occasion was on the next day. It was in the morningof the next day. I was sitting in my office and Ms. Gatefield walked in.

I said to her, "Who is that fellow walking through the corridor" -- as you might say to anybody -- "who is that fellow walking through the corridor with I believe Mr. Messinger?"

She said, "That is my replacement."

I said, "Your replacement? What replacement?"

She said, "I found a replacement."

I said, "Two days from now, three days? If we were to consider a replacement at all under the pressure

circumstances we were in, I would want to know who he is. I had never met him. I would want the bank to meet him and to say yes, I approve of this man replacing a key member of the staff --

She said, "Well, that is who it is."

I said, "That is not your replacement. There is no such thing as a replacement at this moment on this job, in two day leave time. I expect you to hold to your obligation with me that you will stay in this company until your duties on the first phase of this work are over."

She said, "We'll see."

Q Were there any additional conversations on that day?

A We met five or six times during the week. I don't remember if there was an additional one on that day, but it must have been in the afternoon where I asked her again. I don't know.

Q Did you then have meetings with her on May 30th, the Friday of that week?

A I had a meeting on Friday that week, yes.

Q When did you have a meeting with Ms. Gatefield?

A The first thing in the morning on Friday.

Q Who called that meeting?

A I called that meeting.

Q What did you say to her?

A I told her that the proposition I had made to her regarding a possible way to save an exploding situation on the evening, on the telephone the night before, could not possibly work.

Q Did you have some conversation with her the night before?

A That is correct.

Q Where was that conversation?

A I was at homeand I called her on the telephone.

Q What did you say to her?

A I called her up and I said to her -- first I said "Hello," on the phone. Somebody else answered the telephone.

MR. FERNEY: Objection.

THE COURT: Go ahead.

A There was a lot of noise in the background.

I said, "May I speak with Ms. Gatefield, to Marian?"

They said yes and she came to the phone.

She said, "Yes?" I remember the conversation tone clearly.

Q Just the conversation.

A I said "I thought of a way -- this situation we are involved in is going to have to cause me to fire you or

to take some punitive action. I don't want to do it. The company needs you, you have performed good service before, the project is a little difficult. I thought of a way, maybe, that I could let you go on a leave of absence and avoid having your going on Friday in direct countermanding of my order."

She said, "Well, what is it?"

I said, "I just got back from Iran. I am exhausted. You -- I will call the bank tomorrow morning and I will try to sell your going immediately on an emergency leave, I will try to sell it to them." I said, "If I fail, and you may come along with me, I want your promise I have at least one more week, then I will authorize a leave five days out if you will just promise that if I fail in selling the idea of your leaving, you will stay five more working days."

Q What did she say?

A "No."

I said, "I don't understand it." I said, "Marian, I will try to sell it to the bank tomorrow, with you there."

She said, something like, "For your sake, I hope you succeed," to the tune of music.

MR. FERNEY: Objection.

THE COURT: Strike the last remark.

Q Was there any further conversation on that telephone call?

A No. The telephone call ceased, I said good-bye. She said good-bye, and hung up.

Q You were discussing before the conversation you had with her on Friday morning in which you referred back to that telephone conversation. Did you have any additional conversation with her on Friday morning?

A Yes.

Q Concerning this matter?

A Yes, I did. I said to her "Marian, I don't know why you are doing what you are doing. You have repeatedly not offered me one reason. I offered you a way last night at the 11th hour of the dismemberment of your career in our company. A way out. I felt your response to me, when you said, 'For your sake I hope you are successful' was in fact stimulating, purposely stimulating an argument."

I said, "I am not going to go to the bank today and sell that. I just order you to remain here until I authorize a leave of absense."

I further recounted to her that she had had a leave of absence before, during the same year, and that we had attempted to accommodate every need that she had, including high salaries and so forth and I just did not understand

that kind of provocative behavior.

She said that was too bad, she was going to go. That is all there was to it. She left my office.

Q Did you have any other conversation with her on that day?

A Yes. On Friday afternoon I called her back in the office and I said to her, "Marian, I am appealing to you. I really don't want to fire you here. I don't want to do anything on one incident in the company, one incident out of a number of years of work. Why are you taking this public stand? Why are you saying 'I am going to go anyway, I won't even remain five days'?"

She said, "I am going to go and it may be permanent." She said, "I don't know, but Saturday night I will be a plane winging my way abroad."

I said to her, "You are really forcing me to take punitive action."

She said, "What action are you going to take?"

I said, "I want to think about it, it is Friday night."

Should she -- people --

Q Just the words.

A I said to her, "I want to think about it, it is Friday night." I said, "If you are going to go Saturday,

you are going to go, I can't hold you here. When I arrive on Monday, if you are there, fine. If you are not there, I will take such action as I deem suitable and fitting as behooves my position in there. I don't like those kinds of actions," I told her.

She said "Fine."

I said, "You won't reconsider?"

She said, "No."

I said, "Once more, please."

She said, "Too bad," and walked out of the room, exactly that way.

T3 Q Did you have any further conversation with her on that day?

A No.

Q Did you have any further conversation with her over the weekend?

A No.

Q Did you take any action with respect to Miss Gatefield?

A Yes, I did.

Q What did you do?

A On Monday I arrived at work. I saw she was not there. I called my secretary and I wrote her a letter saying that you are hereby terminated from this company. I don't remember the exact words.

Q Did you other than the lawsuit of course, did you ever speak to her subsequent to that Monday?

A Subsequent to which Monday?

Q This Monday on which you sent the letter?

A I sent the letter on Monday but I never spoke to her on Monday.

Q You never spoke to her on Monday?

A No.

Q Did you speak to her subsequent to Friday concerning this matter?

A No.

MR. LEWIS: No further questions.

THE COURT: We will take a short recess.

(Recess)

CROSS EXAMINATION

BY MR. FERNEY:

Q Mr. Lecht, I hand you Plaintiff's Exhibit 3, the contract, and ask you whether this is your signature on page 4.

A Yes, it is. It looks like it.

Q You didn't fire Marian Gatefield on May 30th, did you?

A No, I did not.

Q You fired her on June 2nd, is that correct?

A That is correct.

Q Wasn't there a crisis of some sort involving the Coins project on June 2nd?

A Yes, there was.

Q Hadn't Marian Gatefield told you on May 30th to call her in the event there were any problems with Coins or with her replacement?

A I don't remember Marian directly saying to me call her if there was a problem with Coins or her replacement because at that moment --

Q Answer the question.

A I'm sorry.

THE COURT: He answered. Proceed.

Q Do yourecall that a week and a half ago or so I took your deposition?

A Yes.

Q Do you recall this question and this answer on page 35:

"Q Getting back to the conversation, the last conversation you had with Miss Gatefield on May 30th, did she tell you that you could be in touch with her if her replacement did not work out?

"A I don't understand the question. There was no replacement.

"Q She used those words?

"A She never used those words with me, never used those words.

"Q Did she tell you that you could call her in England?

"A She may have."

Do you recall that?

A I recall that testimony, yes.

Q So then you on this date when I asked a question of you whether she said you could call her, you said she

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may have?

A She may have.

Q Was part of the crisis that was going on the fact that Mr. Messinger resigned that morning or had given his letter of resignation?

A Yes.

Q Did you believe that Marian Gatefield knew that Mark Messinger was going to resign?

A I held no beliefs of that kind.

Q You had on May 30, 1975, great admiration for Miss Gatefield's professional skills, is that right?

A On May 30th?

Q Yes.

A They had declined on May 30, 1975.

Q Her professional skills?

THE COURT: His admiration.

Q Had you been a friend of Marian Gatefield?

A I thought I was.

Q Did you know her socially?

A I cannot remember any contacts out of work wherein I socialized with Miss Gatefield.

Q Did you know her well?

A I know her as well as any senior staff member in the company.

Q You were her friend?

MR. LEWIS: I object to this as repetitive.

THE COURT: Overruled.

A I consider myself a friend of the staff of that company.

Q Answer the question, please.

A As far as Miss Gatefield was a member of the staff, I considered myself a friend.

Q It would have been possible, would it not, for you to contact Miss Gatefield on June 2nd or thereabouts concerning the problems in the Coins project?

MR. LEWIS: Objection, speculative.

THE COURT: He can answer if he knows.

A I'm sorry, will you repeat the question.

THE COURT: Would it have been possible for you to contact her concerning the problem in the Coins project on June 2nd?

THE WITNESS: I had no reason to contact her on June --

THE COURT: Would it have been possible?

THE WITNESS: I could have possibly if I had known where she was.

THE COURT: Did you know?

THE WITNESS: No, sir, not on June 2nd.

Q Did you have her address in England?

A No, I did not have her address in England.

THE COURT: You wrote her a letter.

THE WITNESS: The company -- I could have I suppose gone to my secretary and said "Would you please try to contact Miss Gatefield."

Q After you wrote the letter to Miss Gatefield did you expect her to contact you?

A Yes, I did.

Q For what purpose?

A To confirm the exit requirements of our company, turning in her credit cards, her key, picking up her personal belongings, straightening out her financial matters with the firm.

Q Isn't it true you expected her to contact you to ask you to come back to the company?

A No.

Q Did ACT have a contract with Miss Gatefield?

A I am not an attorney. I cannot answer on what a valid contract is.

However, if you want my opinion on it, the answer is no.

Q Do you recall at the deposition on page 4 I asked the following question and you gave the following

answer:

"Q Did ACT have a contract with Miss Gatefield?

"A Yes."

A I assume that the document which you showed me at the deposition which had my signature on it and had her signature on it, was a contract with the company.

Q Reading further in the deposition my next question after that was:

"Q I show you Exhibit 3 in Miss Gatefield's deposition, the contract.

"A It is not the original of the contract and I can't verify since it has been torn apart that every page is in fact a representation of the original."

That was your answer to that question. In fact I asked you before I had shown the contract whether you had a contract with Miss Gatefield.

A Again, I am not an attorney and I did not know what a valid contract is.

THE COURT: It would save a whole lot of time if you objected to that as calling for a conclusion of law.

MR. LEWIS: Yes, your Honor.

Q In your letter dated 2nd June 1975, Exhibit 4, the third paragraph of that letter you wrote the following:

"Q In closing I am obligated to inform you that the

agreement between you and this company precludes your consulting with the clientele with whom you had contact" and then goes on to discuss that particular provision of the contract.

Is it true that you dictated those words?

A That is correct.

THE COURT: That was one of the provisions of Exhibit 3, wasn't it, being the document --

THE WITNESS: It was not taken from the exhibit, sir.

THE COURT: But that was one of the provisions?

THE WITNESS: A similar provision was there, that is correct.

THE COURT: At the time you wrote the letter it was your understanding that she was bound by those provisions, is that it?

THE WITNESS: At the time I wrote the letter, that is correct.

Q In your last conversation with Miss Gatefield on May 30th, didn't you discuss the possibility of her taking a trip to Zaire?

A Yes, I did.

Q What did you say?

A I was searching -- I said to Miss Gatefield, she

was sitting there -- standing actually leaning against a wall. I said to her:

"This is going to a catastrophic end. I really don't want it to happen."

b2- I said "I will try to make some accommodation for you. Let me think imaginatively."

I said, "Well, we were planning not to go to the World Trade Center conference in Zaire. If you will not cause me to become compromised and the management of this company to be compromised by your flagrant disobedience of an order, I will find a way that you can go and conduct whatever you want to conduct in England."

I said, "For example, the Zaire trip which you were not planning to do, I will let you go on that trip and give you the right to go by England and do whatever you have to do."

She never would tell me what she had to do there at all, not a word.

She said, "No, thank you, I don't want it."

That was the conversation we had on Zaire.

Q Do you remember did you use that tone of voice in discussing it with her?

MR. LEWIS: I object to that question.

THE COURT: Sustained.

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Q Did you on May 30th discuss letting Miss Gatefield or rather requesting Miss Gatefield to let you use her apartment?

A Never.

MR. LEWIS: Objection.

Q Any discussion concerning Miss Gatefield's apartment as part of the conversation?

A There was no discussion concerning her apartment, never.

Q On an earlier date in May, I think about May 16th or thereabouts, you had a conversation involving Miss Gatefield's salary, is that correct?

A On May 16th?

Q Or thereabouts.

A Yes.

Q According to your testimony at what point in time would this salary, would this increase in salary go into effect?

MR. LEWIS: I object to the form of that question.

THE COURT: Sustained.

Q Were you going to discuss this increase in salary at another point based on your conversation?

MR. LEWIS: I object to the form of that question too, your Honor.

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THE COURT: Overruled.

A I'm sorry, will you read the question?

(Question read)

A The conversation which I called Miss Gatefield into the office for on the 16th?

Q Answer the question please.

A It had no bearing.

THE COURT: Strike it out.

Q Answer yes or no.

A No, not based on this conversation, no.

Q But you did discuss you testified $2,000 or $2,500 increase?

A I did discuss it after she brought up the subject in conjunction with my asking her to stay which I may add.

MR. LEWIS: Just answer the question.

MR. FERNEY: No further questions.

REDIRECT EXAMINATION

BY MR. LEWIS:

Q Mr. Lecht, did you ever see Marian Gatefield's signature on Exhibit 3, the contract?

A The first time, yes, I saw it at the deposition, the first time.

Q Prior to the deposition did you ever see it?

A Never saw her signature on a contract in my company.

Q To your knowledge did you ever have custody of that contract with her signature?

A Never.

Q In the conversation you had with her on May 30th which Mr. Ferney asked you about, did you give instructions to Miss Gatefield on May 30th regarding what she should do in that company?

A I told her without reservation that, number 1, as senior manager reporting to me in the company she was setting an example in a company which I had built from the day I left the Army, from $800, period.

That it was poor and was going to wreck the fabric of the company. I told her that I could not sustain that kind of behavior in front of the company where we had pioneered personal relations with the staff.

I told her that I would do anything to save the situation, save compromising the company and the staff of that company and whoever else was involved with it.

Q Did she say -- I'm sorry.

A I also told her that I wanted her to stay, I forbade her to go. I wanted her to fulfill her obligations--

THE COURT: This is repetitive. It is not proper

redirect examination. We are not going to go over all of this again with music.

Q Mr. Lecht, on Monday you knew Mr. Messinger had resigned?

A On Monday I knew he resigned the first time.

Q When was that resignation effective?

A 60 days out from then.

Q He would continue in the employment of the company until 60 days following?

A That is correct.

Q Mr. Messinger's position in the company was what?

A Project manager on Coins.

THE COURT: I will give you five more minutes.

Q He was working on the same project Miss Gatefield was working on?

A That is correct.

Q So that you were about to lose two individuals on this project, is that correct?

A We had lost one, we had a resignation from a second.

MR. LEWIS: No further questions.

THE COURT: You are excused.

(Witness excused)

THE COURT: Next witness.

MR. LEWIS: Your Honor, may we approach the bench

a minute?

(Discussion at the bench off the record.)

MR. LEWIS: May I have just one minute before the witness is here?

(Pause)

ROSEMARY DONALDSON, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEWIS:

Q Are you an employee of ACT?

A Yes.

Q The defendant in this case?

A Yes.

Q How long have you been working there?

A About five and a half years.

Q What is your position?

A I am secretary to Mr. Lecht, president.

THE COURT: Miss Donaldson, if you would face the jury they could hear you.

Q Are you familiar with the plaintiff, Miss Gatefield?

A Yes, I am.

Q Were you working in Advance Computer in the

spring of 1975?

A Yes, I was.

Q Was there a time when you became aware of Miss Gatefield's plans to take time off?

A Yes.

Q When was that?

A Probably in May.

Q Do you recall whether there was any occasion for this meeting?

THE COURT: Would counsel come up? I think this is cumulative on this point. I think we have had enough evidence on it. If you want some other subject, all right.

Q Were you aware of these circumstances in the latter part of May, 1975?

A Yes.

MR. FERNEY: Can I hear the previous question to this?

THE COURT: I don't think it was of any substance. She was aware of the leave of absence problem.

Q Have you ever seen Plaintiff's Exhibit 4?

A Yes.

Q Did you prepare or type this letter?

A Yes.

Q It is a letter date June 2nd from Charles Lect to Marian Gatefield.

A Yes.

Q Did you speak to Ms. Gatefield on June 2nd, the date of that letter?

A Yes.

Q Where was she when you spoke to her, if you know?

A I don't know where she was.

Q Did she call you?

A Yes.

Q Was that in response to a call from you?

A Yes.]

Q What did you tell her?

A I told her that Ms. Tipton had written a letter of termination and had sent it to her home in England and also a copy to her apartment in New York.

Q Did you understand that was an overseas call by Ms. Gatefield?

A I don't believe so.

THE COURT: Did she call you or you call her?

THE WITNESS: I called her first.

THE COURT: Where did you put the call?

THE WITNESS: To her apartment in New York.

THE COURT: Did you speak with anyone?

THE WITNESS: No. She didn't answer, but I called a mutual friend and asked her to get in touch and that she called me.

THE COURT: How much time elapsed between your call and hers?

THE WITNESS: I believe I called her during the day and she called me back in the evening.

Q Approximately what time?

A I have no idea.

Q Was it before 10 o'clock?

A Oh, yes.

Q What did she say to you?

A She just asked me what the letter said.

Q What did you say?

A I told her as closely as I could.

Q Did you have the letter in front of you at the time?

A No.

Q What did she say to that?

A I really don't remember it.

MR. LEWIS: No further questions.

THE COURT: Cross examination.

MR. LEWIS: Your Honor, I have two more questions.

BY MR. LEWIS:

Q Did you ever talk to Ms. Gatefield around that period of time, the end of May, regarding Mr. Messinger?

A Yes.

Q Do you recall when that was?

A Probably towards the end of the week.

Q Of the preceding week?

A The last week in May.

Q Where did that discussion take place?

A In the office.

Q What did she say to you regarding Mr. Messinger?

A She said that he had told her that he was planning to resign, but he was withholding the resignation until Monday.

Q Did you say anything to her?

A No, not that I can remember, anyway.

MR. LEWIS: No further questions.

CROSS EXAMINATION

BY MR. FERNEY:

Q Ms. Donaldson, it is true you are a very close personal friend of Marian Gatefield?

A Yes. Not so close, but we are personal friends.

Q Would you please be more explicit, what you told her about the letter Mr. Lecht had dictated to you?

MR. LEWIS: Objection as to form.

THE COURT: Sustained.

It is cross examination. You can put leading questions, if you wish.

Q Did you read the letter to her?

A No, I didn't have the letter with me.

Q What time was the letter dictated?

A I believe it was some time the -- late morning.

Q Was this after Mr. Lecht had met with Mr. Schachter

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A I really don't recall that.

MR. FERNEY: No further questions.

THE COURT: You are excused.

(Witness excused.)

MR. LEWIS: No further witnesses.

THE COURT: Do you rest?

MR. LEWIS: Rest.

THE COURT: We will reserve on motions.

Is there any rebuttal?

MR. FERNEY: May I confer with my client outside?

THE COURT: Surely.

(Pause.)

MR. FERNEY: No rebuttal, your Honor.

THE COURT: You rest?

MR. FERNEY: Rest.

THE COURT: The jury may take a luncheon recess now. Don't talk about the case or let anybody talk about it with you. You may take your luncheon recess until 2 o'clock at which time you will hear closing arguments and the Court's instructions.

(Jury left the courtroom.)

THE COURT: I would like counsel to work on the matters I suggested. The time is short, but you have had a lot longer time than I to do it.

(Luncheon recess.)

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CHARGE OF THE COURT

THE COURT: [MacMahon, D. J.] The plaintiff Marian Gatefield claims here that she had an employment contract with the defendant, Advanced Computer Techniques Corporation and that she was wrongfully discharged from her duties as an assistant system analyst and programmer by the defendant because she went to England on a two months' leave of absence which she says was granted to her by her boss.

The defendant claims that it did not grant a leave of absence to her. On the contrary, it forbade her to take a leave of absence; that her taking the leave of absence left them in the hole on a new and important account which they had just received known as the Coins project with the First National City Bank.

The defendant claims that because she left contrary to its instructions it was justified in discharging her.

Now, essentially the key question for you in this case, putting aside all of the underbrush, is whether this plaintiff left on her own accord against the will of her employer; or whether she left with her employer's consent.

It is a matter of common sense as well as the law that an employer has a legal right to terminate any employee who fails to obey his reasonable orders or instruc-

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tions, or who fails to perform his duties or who is guilty of insubordination.

You are instructed if you find that the plaintiff went on a leave of absence without the defendant's consent or authorization, and she did so despite reasonable instructions to the contrary, then the defendant's discharge of the plaintiff was justified and she may not recover on her complaint.

Now, if you find that the plaintiff left without permission, without consent, and contrary to the instructions of her employer, drop your deliberations and return a verdict for the defendant; you need go no further.

On the other hand, if you find that she did leave with the consent of her employer, then the defendant had no right to discharge her and your verdict should be for the plaintiff. There are some issues here that underlie some of these questions and I will now try to come to those. The plaintiff is claiming she had an employment contract. You have heard the evidence concerning Exhibit 3 which, on its face, purports to be a written contract dated November 1, 1972, as I recall it, signed by both Mr. Lecht and by the plaintiff.

As I recall her testimony, there was no dispute in the evidence about the genuineness of those signatures.

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There is a dispute, however, as to whether this contract was ever made.

A contract isn't made by the mere fact that two people sign a written agreement. There must be an acceptance of an offer.

As I recall it here the evidence was that this contract in blank form, signed by Mr. Lecht, was given to the plaintiff and she was asked whether she wanted to sign it. She said she wanted to think it over.

From time to time Mr. Schachter asked her what she had done about it. She said she was still thinking about it or something to that effect and he said, "Fine, take your time" something to that effect.

In any event, there is no evidence that defendant ever revoked this offer, it was outstanding. But an offer doesn't stay alive forever. It expires at the end of a reasonable length of time. There is no precise definition as to what constitutes a reasonable amount of time. It depends on all the surrounding circumstances, on the importance of time to the employer - employee relationship here and that is a matter that you will have to decide: Whether this contract, this offer to enter into a contract of employment was still alive or whether it had expired by the lapse of an unreasonable length of time.

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If you find that it was alive and that the plaintiff signed it and stuck it in her safe somewhere, there is no contract, because before an offer can be accepted the person to whom the offer is made must communicate his acceptance to the person making the offer.

Here the plaintiff would have to manifest her acceptance in some way or other, show the defendant that she had accepted the employment contract.

Here the plaintiff testified that she, as I recall it again, she did sign the contract. I am not quite sure when she said she signed and delivered it to Mr. Schachter's secretary.

You have heard Mr. Schachter testify that there never was any contract in his files, that he never saw it. So it is for you to say whether that contract was ever made and, if so, whether the plaintiff's acceptance was communicated to the defendant.

But let us suppose now, if you find there was no contract at all, they never entered into this formal agreement which is in evidence as Exhibit 3, then we have a situation where the relationship as to the duration of the plaintiff's employment was one at will. That means that the employer here, the defendant, could fire her at any time for no reason whatever or for any or no reason, provided he

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acted in good faith.

He couldn't fire her, for example, in order to cheat her out of a vacation or anything like that; he couldn't do that. So long as he acted in good faith, if it was simply an employment at will, then he could fire her anytime with or without reason at all.

On the other hand, if you find that they did enter into this agreement, that agreement on its face provides, and I will read from it, "that the employee shall perform such duties as may be assigned to him from time to time by the employer; shall devote his entire time, attention and energies to the business of the employer and shall faithfully perform his duties in accordance with the directions of the employer."

So here if you find that this agreement was made, then you come to the question again of whether this plaintiff left on this leave of absence with permission or whether she took off contrary to her employer's instructions. If he instructed her not to go then she plainly had no right to go and her leaving would be a breach of the agreement and it would justify defendant's discharging her.

On the other hand, if you believe her testimony to the effect that she was granted permission to take the leave of absence, then the employer had no right to dis-

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charge her and its doing so was a wrongful breach of the contract, and she would be entitled to recover damages.

We come to damages. The fundamental principle of the law of damages is that the plaintiff is entitled to be put in the same position she would have been in if she had returned to her employment after taking a leave of absence.

If she had returned to her employment she is entitled to be put in the position as though she hadn't been discharged, she had taken her two-month leave of absence without pay, and would have returned, she would have been entitled to remain for another five months and then she could have been discharged under the terms of the agreement. So the maximum recovery she can get for the loss of wages would be whatever sum you find compensates her for five months on the agreed rate of employment.

Here again there is a dispute about the agreed salary. The plaintiff claims that just before she took off on this leave of absence her employer, Mr. Lecht, promised to increase her pay to $25,000. The stipulated salary that she was earning was, I think, something in the order of $23,000. It is whichever of those figures you determine to be her salary and it is five months' salary.

She was also entitled to be compensated for whatever expense she reasonably incurred in attempting to find

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comparable employment.

The mere fact that one is wrongfully discharged doesn't mean that he can sit around and draw a pension for the rest of his life. He has to hustle and get out and get a job. He doesn't need to take employment of lesser standing or skill. He is entitled to comparable employment, similar employment and he must make reasonable efforts to get that.

He must exercise due diligence to find new employment. If he fails to do that, then the jury should determine when he would have been employed if he had exercised due diligence.

So it is up to you to decide what this figure of damages is, computing first the amount of lost salary over the five months' period, the reasonable expenses incurred in attempting to find comparable employment. Then you determine the amount of money the plaintiff earned or should have earned in that five-month period if she had exercised due diligence and deduct that sum. If you find that she did exercise due diligence, then, of course, since she didn't actually get a job, there is nothing to deduct.

But if you find in the exercise of due diligence, let us say that at the end of the month she could have gotten equal or a similar job, then you would only give her

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damages for one month instead of five months. In suggesting one month I don't mean to suggest that is what you should find. I merely use the figure one month as an example of the method.

All of us in this courtroom have different functions. The lawyers, of course, get their case a lot sooner than you and I do and have time to think about it before they even bring it into the courtroom. So it is their job to bring it to us in some understandable form, to make clear to you and to present the issues to you for your decision.

We have been fortunate here to have two very able, conscientious young lawyers who have done a very good job for their respective clients. But you have to bear in mind that they are advocates. They advocate their client's cause.

You and I have a client, too. Our client is the cause of fair, evenhanded, impartial justice. We serve our client when citizens come into this Court and get fair justice, whoever they are; whether they are corporations, whether they are citizens of England, whatever their color, whatever their race whether they are rich or poor. Those things are of no significance in this Court. In short, we must hand out fair, evenhanded and impartial justice.

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How do you go about that? Just as the lawyers have their job, I have mine. Mine is to rule on questions of evidence that come up during the trial, to move the case along so that the next litigants waiting in this busy Court get their day to try their lawsuit. At this point I instruct you on the law that applies to this case. It is your duty to accept the law as I give it to you whether or not you agree with it.

Just as I am the exclusive judge of the law, you are the exclusive judges of the facts. You and you alone decide just where the truth lies in this case. You and you alone decide which witnesses to believe and this is so as to every witness.

You should consider all of the testimony, you should consider all of the exhibits which have been received in evidence; weigh it in the skill of your reasoning powers, sift out what you believe and decide just where the proof lies in this case.

When I say you should weigh the evidence, I don't mean that you should decide this case on the basis of the number of witnesses or the number of documents because your concern is not with the quantity of the evidence but with the quality of the evidence. And that is so for every witness, whether called by the plaintiff or by the defendant.

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How do you go about deciding whether or not to believe a witness?

First you ought to consider what he said and you are to weigh it in the scale of your reasoning powers and common sense. How does what he said add up with all the other testimony and particularly with the documentary evidence which, of course, can't lie.

How strong or weak is the witness' memory of important events here? Does the witness have any interest in the outcome of this case?

All of the witnesses in this case have been interested. They are partisans for their side. Obviously, the plaintiff wants to win. Obviously Mr. Lecht, Mr. Schachter and presumably his secretary Miss Donaldson wants to win. So they are all interested.

I don't say that just because a witness is interested that you should discredit what he says. I simply say that you should hold it up as a fact to measure the truth of what he said, consider that fact and you ought to consider also whether the witness on some prior occasion had made some inconsistent statement and, if so, how important is it.

In determining the credibility of a witness probably more significant than anything is how he acts on

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the witness stand; whether the witness has given you straight answers to straight questions.

Was the witness overselling or laying it on a little too heavy? We don't buy everything that people tell us in our daily lives and your reactions here should be no different whatsoever. You measure what he says against your plain everyday common sense.

You are not bound to believe unreasonable statements or worse, to accept something that insults your intelligence just because the statements are made on a witness stand and in a public courtroom.

I saw you watching these witnesses with particular care as they were testifying. Obviously you were sizing them up. How did the witness impress you? Was his version honest and truthful and candid and straightforward? Or was it a tissue of lies? Somebody is lying here and you have to decide who is doing the lying.

Your verdict here must be unanimous. Once you retire to the jury room, treat each other with courtesy and with respect as I know you will. If differences of opinion arise, talk out the differences. The whole idea of the jury system is to get a cross-section of the community who are totally disinterested in the case, who don't know the people involved, who couldn't care less who wins except to

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do what is right and that is all we are concerned with here. Decide the case on the evidence, the evidence as you remember it.

Now, in that connection it is not the way the lawyers remember the evidence, it is not the way I remember the evidence. Here and there I have touched on the evidence but if you have a different recollection of the evidence, disregard what I said about it and rely on your own memory.

And when I say your memory, I mean your collective memory. Sometimes jurors are only out a few minutes and they tell me they want the testimony of a certain witness reread. They haven't even thought about it amongst themselves. Think about it amongst yourselves and one or the other of you may help refresh the recollection of any other juror.

But if in the end you want some testimony reread, send me a note through your Foreman Mr. Cassidy and I will try to have the Reporter find it in his transcript and read it to you, if you can pinpoint what you want.

I deliver this case to you now with every confidence that you will fully measure up to your oath, to decide this case fairly and impartially.

Your Foreman will render an oral verdict either for the plaintiff or for the defendant. If it is a verdict

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for the plaintiff, state the amount of damages which you find in her favor.

Are there any exceptions, gentlemen? If so, I will hear them at the side bar.

(At the side bar:)

MR. FERNEY: The jury should be charged as to the the burden of proof on the discharge.

MR. LEWIS: I except in that unemployment insurance should be offsetting in this case.

THE COURT: I decline to charge that. I frankly don't know what the law is on that and I am not convinced from the cases which you have undertaken to cite from other jurisdictions. I will entertain a motion to reduce if plaintiff gets an award. Brief the point.

MR. LEWIS: Except that in our brief we pointed out cases that indicated that she cannot recover anything beyond the amount of her lost wages, Page 6 of the brief.

THE COURT: No, I don't agree with that.

(In open court:)

THE COURT: I neglected to instruct you on the burden of proof. The plaintiff who is seeking relief has the burden of persuading you by a fair preponderance of the evidence that her version of what happened here is what did happen. When I say the fair preponderance of the

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evidence, I simply mean she must convince you that what she claims is more likely so than not so.

On the element of whether there was just cause for discharging her, in the event that you find there was a contract, the defendant has the burden of establishing the fact of just cause.

You may now retire. The alternate juror is excused.

[The jury retired to deliberate at 3:30 p.m.]

[The marshal is sworn by the Clerk.]

[A note was received from the jury at four p.m.]

[The following took place in the robing room:]

THE COURT: What is the problem here?

MR. FERNEY: We don't understand the question.

THE COURT: I understand it and I will handle it.

[In open court, jury present at 4:15 p.m.]

THE COURT: I have your note:

"One, money spent by plaintiff for employment."

I assume you mean the expenses she incurred in looking to find other employment?

THE FOREMAN: Yes, right.

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THE COURT: "Two, personal property loss by plaintiff."

I take it that means the items of personal property she left behind?

THE FOREMAN: Yes.

THE COURT: I will have the Reporter read the pertinent testimony.

[Record read.]

THE COURT: I will have the Clerk give you Exhibit 7, the list of monies plaintiff claims she spent in her efforts to find other employment.

If you want anything further on this, just let me know.

[Jury retired to continue deliberations.]

[Jury note marked as Court Exhibit 1.]

[Jury returned to the courtroom at 4:30 p.m.]

THE COURT: Will you stipulate all six jurors are in the box?

MR. LEWIS: Yes, sir.

MR. FERNEY: Yes, sir.

THE CLERK: Mr. Foreman, have you agreed upon a verdict?

THE FOREMAN: Yes, the jury has agreed upon a verdict.

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THE CLERK: What is your verdict?

THE FOREMAN: For the plaintiff, $10,115.

THE CLERK: Listen to your verdict as it stands recorded, you say you find for the plaintiff in the amount of $10,115 and so say you all.

MR. LEWIS: May we have the jury polled?

THE COURT: Poll the jury, please.

THE CLERK: Members of the jury, listen to your verdict as it stands recorded, you say you find for the plaintiff in the amount of $10,115.

[All jurors affirmed the verdict.]

THE COURT: I want to thank you for the very careful attention you gave to this case. It is a case that I think personalities got in the way of common sense and a little more objectivity and the parties would have resolved their differences without our help.

But I never say what I would have done if I were a juror. I thought all along this was a case that should have been settled and would have been settled if people had been a little more objective about it.

I do want to thank you though for reaching a verdict so that we don't have to do it all over again. Have a nice holiday.

[Jury left the courtroom.]

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MR. LEWIS: May I make a motion notwithstanding the jury verdict?

THE COURT: At this time you may make that motion as well as the motions which would normally have been made during the trial. I just allowed you to reserve making them until now because we might not have had to hear them at all.

I will hear those motions now plus any post-verdict motions.

MR. LEWIS: I would like to move for a judgment notwithstanding the verdict. I believe during this trial Miss Gatefield testified that she was requested to remain with the company and not to leave on a leave of absence. I believe that that in itself was grounds for termination for just cause under the terms of the contract, just cause for terminating Miss Gatefield. She admitted and conceded it absolutely, and there is no question whatsoever.

That is exactly what happened. It was corroborated by Mr. Lecht and corroborated to a large part by Mr. Schachter.

She knew about it, there is no question she knew about it. The testimony of Miss Donaldson and her own document establish she knew she was to be terminated when she left and did not return.

The single most significant fact in this case is that she has admitted that she was requested to stay with

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this employer and that we submit is grounds for termination under the contract.

Whether or not there was a contract, of course, we have contended before that there was no communication of that contract.

THE COURT: There the jury found against you.

MR. LEWIS: I understand that. So I am addressing myself particularly to the question of just cause, of wrongful discharge under the contract.

THE COURT: Do you have the testimony to read to me? I want the whole context of it. As I recall it, it wasn't quite as sharp as you state it.

MR. LEWIS: I think there are several. On Page 89.

[Testimony read.]

That is what I consider the nutshell of her testimony on this aspect of the case and that is what she admitted, that it was a request.

There are a number of cases that talk about what constitutes a wrongful discharge and what constitutes a justifiable discharge in contracts of employment of this kind. Where a contract states that a sales representative is to work under the direction of the management as may be directed, under the direction of the local manager, under

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the direction even if he was asked, and the Schiller case which we talked about before, and he shall be asked to perform duties and the question is whether he was asked, directed, and we submit and we might argue semantics as to whether there was a distinction in her mind that this was a request by Mr. Lecht to stay and not to leave -- it was not a direction, it was a request.

She left, it is uncontested of course that she left and that is really why we feel that under this contract which provides for termination for cause, that her violation of this instruction or this request, as she put it, is such a violation that would constitute a ground under the contract for termination.

THE COURT: What have you got to say?

MR. FERNEY: I say in the context of the testimony as further developed in the trial, your Honor, it becomes abundantly clear from her testimony --

THE COURT: Now, you have the record, show me where that is so abundantly clear.

MR. FERNEY: I don't have a record of the trial.

THE COURT: Counsel has one there.

MR. FERNEY: In the testimony of the meeting on May 30, there is testimony to the effect that there was a request she stay on.

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THE COURT: Read it to me, you have the transcript. The time is now to be accurate and precise for a change.

I am not going to sit here this late in the day. Make the motions on paper within the next ten days and cite the record and do it on papers.

MR. LEWIS: Also on the mitigation question you asked?

THE COURT: Any motions you want to make make them on papers within the next ten days.

MR. LEWIS: Yes, sir.

THE COURT: I still say it would have made sense if you had settled this case.

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[illegible] COURT REPORTERS [illegible]

DEFENDANT'S REQUESTS FOR INSTRUCTIONS TO THE JURY
(Filed April 19, 1976) (pp. 248a-251a)

United States District Court
Southern District of New York

Marian Gatefield,

Plaintiff,

v.

Advanced Computer Techniques Corporation,

Defendant.

75 Civ. 5095 (LFM)

Defendant's Requests
for Instructions to the Jury

Lewis & DeClemente, Esqs.
Attorneys for Defendant
757 Third Avenue
New York, New York 10017

Defendant's Requests
for Instructions to the Jury

Defendant in the above-captioned cause, requests the court to give to the jury the following instructions.

1. You are instructed that an employer has a legal right to terminate any employee who fails to obey his reasonable orders or instructions, or who fails to perform his duties, or who is guilty of insubordination.

2. You are instructed that if you find that the plaintiff went on a leave of absence without the defendant's authorization, or that she did so despite reasonable instructions to the contrary, then defendant's discharge of the plaintiff was justified and she may not recover on her complaint.

3. You are instructed that if you find that plaintiff was wrongfully discharged, then the maximum amount of damages you may award her is the salary that she would have been entitled to had she been permitted to continue

working from the time of her return from her leave of absence on August 1, 1975, through December 31, 1975, or five months salary. This maximum amount of damages may, however, be lessened as I will shortly explain.

4. You are instructed that, even where an employee is wrongfully discharged, the law requires that she use reasonable diligence in obtaining other employment in order to mitigate or lessen the extent of her damages.

5. You are instructed that if you find that plaintiff failed to exercise reasonable diligence in seeking new employment, then you must reduce any award of damages in her favor by the amount she could reasonably have been expected to earn with the exercise of reasonable diligence during the period beginning from the date of her discharge and ending on December 31, 1975.

6. You are instructed that if you find that plaintiff earned monies from employment during the period beginning with the date of her discharge and ending on December 31, 1975, then you must deduct any such monies from

any award to which you may find her entitled.

7. You are instructed that if you find that defendant's discharge of the plaintiff was justified, then the law requires that she pay the defendant the value of all proximate damages defendant suffered by reason of her having failed to do her work.

8. You are instructed that in determining the extent of defendant's damages, you may consider the total circumstances in which plaintiff left, the impact of her leaving upon defendant's business operation; the value of her services to the defendant's business operation; any expenses defendant incurred to see that plaintiff's work was accomplished whether they be by reason of overtime for other employees or expenses in obtaining a new employee; and any loss of business that was suffered as a result of her leaving.

DEFENDANT'S SUPPLEMENTAL REQUESTS FOR INSTRUCTIONS TO THE JURY (Filed April 19, 1976) (pp. 252a-253a)

United States District Court
Southern District of New York

Marian Gatefield,

Plaintiff,

v.

Advanced Computer Techniques Corporation,

Defendant.

75 Civ. 5095 (LFM)

Defendant's Supplemental Requests for Instructions To the Jury

Lewis & De Clemente, Esqs.
Attorneys for Defendant
757 Third Avenue
New York, New York 10017

Defendant's Supplemental
Requests for Instructions
To the Jury

Defendant in the above-captioned cause, requests the court to give to the jury the following supplemental requests.

1. You are instructed that the written contract in evidence purporting to be between the parties did not come into legal effect unless it was accepted by the plaintiff and unless her acceptance of it was conveyed or communicated to the defendant within a reasonable time after it was tendered to her.

2. You are instructed that if you find that plaintiff did not accept the written contract, or if she did accept it, but failed to convey her acceptance to the defendant within a reasonable time after defendant tendered it to her, then she is not entitled to recover on her complaint.

DEFENDANT'S SUPPLEMENTAL REQUESTS FOR SPECIAL INTERROGATORIES TO THE JURY (Filed April 21, 1976) (pp. 254a-255a)

United States District Court
Southern District of New York

Marian Gatefield,	:	
Plaintiff,	:	
v.	:	75 Civ. 5095 (LFM)
Advanced Computer Techniques Corporation,	:	
Defendant.	:	

Defendant's Supplemental
Requests for Special
Interrogatories to the Jury

Lewis & De Clemente, Esqs.
Attorneys for Defendant
757 Third Avenue
New York, New York 10017

Defendant's Supplemental
Requests for Special
Interrogatories to the Jury

Defendant in the above-captioned matter requests that, in addition to bringing in a general verdict, the jury be required to give answers to the following supplemental interrogatories:

1. Did plaintiff accept the defendant's tender of a written contract of employment dated November 1, 1972? If so:

(a) When did she accept the contract?

(b) Did she convey or communicate her acceptance to the defendant?

2. If she conveyed or communicated her acceptance of the contract to the defendant, when did this occur?

NOTICE OF MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR NEW TRIAL OR DIMINUTION OF DAMAGES (pp. 256a-257a)

United States District Court
Southern District of New York

(Filed April 21, 1976)

Marian Gatefield, Plaintiff, v. Advanced Computer Techniques Corporation, Defendant.	75 Civ. 5095 (LFM) Notice of Motion for Judgment n.o.v., or New Trial, or Diminution of Damages

Please take notice that on April 23, 1976, at 2:15 in the afternoon at the Federal Court House in Foley Square, New York City, pursuant to Rules 50 and 59 of the Federal Rules of Civil Procedure, and in accordance with the directions of the Honorable Lloyd F. MacMahon, the undersigned will move the court for an order granting defendant a judgment notwithstanding the verdict, or in the alternative a new trial, or in the alternative a reduction in the verdict.

Please take further notice that the undersigned shall rely on the defendant's Memorandum in Support of Motion for Judgment Notwithstanding the Verdict, or for New Trial,

or for Reduction in Verdict filed and served herewith, as well as the transcript of the trial in the above-captioned matter.

Dated: New York, New York
April 21, 1976

Lewis & DeClemente

By _____
Herbert Klitzner
A member of the firm

Attorneys for Defendant
757 Third Avenue
New York, New York 10017

To: Ralph R. Ferney, Esq.
299 Park Avenue
New York, New York 10017

U.S. DIST. CT. S.D. OF N.Y.

MEMORANDUM & ORDER OF HON. LLOYD F. MACMAHON
(Filed June 23, 1976) (pp. 258a-265a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIAN GATEFIELD,

Plaintiff,

-against-

ADVANCED COMPUTER TECHNIQUES CORPORATION,

Defendant.

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75 CIV. 5095 - LFM

MEMORANDUM

#44638

MacMAHON, District Judge.

Plaintiff brought this action for wrongful discharge in breach of an employment contract. The jury returned a verdict in favor of plaintiff in the amount of ~~$10,125~~ $10,115 following a two-day trial.

Defendant now moves under Rules 50 and 59, Fed. R.Civ.P., for judgment n.o.v. in its favor, or for a new trial, claiming that the evidence, including plaintiff's own statements, establishes that she took an unauthorized leave of absence and was therefore discharged for cause. Defendant further moves, in the alternative, to reduce

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the amount of the verdict by the amount of enemployment compensation received by plaintiff.

Upon this application, the evidence must be viewed in the light most favorable to plaintiff, and, if reasonable and fair-minded men, properly instructed on the law, could find a verdict in plaintiff's favor, the verdict cannot be upset.

There was no dispute in the evidence upon the trial that plaintiff took a leave of absence and that she was discharged. The key issue was whether defendant permitted or forbade her to take the leave.

Plaintiff testified that in early April 1975, defendant's executive vice-president, Schachter, was acting as president of defendant because the president, Lecht, was absent. Schachter asked plaintiff to work on the "COINS" project. Plaintiff said that, while she was willing to help out, she was planning on taking a leave of absence, beginning May 23, 1975, but that by that time the design overview phase of the project, which she would be planning, would be completed. According to plaintiff, Schachter "agreed that I could

go on leave of absence . . . for approximately two months."

Plaintiff further testified that in early May 1975, in a conversation with defendant's president, Lecht, she stated that she wanted to confirm the date of her taking her leave of absence to go to England and that he voiced no objection after she informed him of what was happening on the COINS project. According to plaintiff, in the middle of May, Lecht asked her to "extend the date of my leaving for another week [May 30, 1975] until a replacement had been found . . . for me . . . to work on the next phase of the COINS project" and that she agreed.

Crediting this testimony, as we must, this was a sufficient basis for the jury to conclude that both Schachter and Lecht acceded to plaintiff's request to take a leave of absence commencing May 30, 1975.

Plaintiff further testified that a qualified replacement was hired, but that on May 30, 1975 Lecht again asked her to stay another week. She replied that she had fulfilled her commitment, that her mother was

ill, that she wanted to leave that day, and that her replacement would be perfectly free to contact her in England should any problem concerning the project arise. According to plaintiff, Lecht did not threaten to fire her if she left, but said nothing.

The jury was justified, on the basis of this evidence, in concluding that Lecht acquiesced in plaintiff's refusal to stay yet another week.

Against this, Schacter, while "quite certain" that plaintiff did not use the words "leave of absence," did not contradict plaintiff's testimony. Rather, he tended to corroborate the substance of her testimony. He testified that in early April 1975, when he first asked plaintiff to work on the COINS project, she agreed but told him that she was hoping to take some time off during the summer and hoped the project would not interfere with her plans. Schachter then represented that the project was due to end at the end of June, that it was a twelve-week project, and that there would be no reason why this would interfere with her plans to take some time off during the summer. He testified that in another conversation, in mid-May, after he had learned

that plaintiff intended to leave at the end of May, he told her he "could not understand why she was planning to leave at that point right in the middle of this project which she had committed to and I was sort of very surprised at hearing that news." According to him, plaintiff replied that she had made some plans and those were her plans. He then stated that he did not forbid her to go.

This testimony, at best, was equivocal and gave the jury ample basis for finding that Schachter agreed, or at least acquiesced in plaintiff's request, but was either confused or misled about the agreed date when the leave was to commence.

Schachter further testified that in a third conversation, during the week of May 19, he did tell plaintiff she could not leave; that she replied that if she wanted to she would leave; and that he told her that if she did, the company had the option of terminating her employment.

Lecht testified that, when plaintiff advised him of her plans to take a leave of absence, he told

her "I absolutely without qaualification do not give you authorization to take a leave of absence from this company," and that plaintiff replied "all right."

It is obvious from the foregoing that essentially the issue upon the trial was one of credibility. The jury, having observed the demeanor of the witnesses and having weighed their testimony in the context of all the evidence and circumstances, resolved that issue in favor of plaintiff. Defendant would have us usurp the jury's function. This we cannot do.

Defendant's motion for judgment n.o.v. is therefore denied; the motion for a new trial on the ground, inter alia, that the verdict is against the weight of the evidence is likewise denied. This motion is addressed to the court's discretion. This does not mean that we should set the verdict aside merely because we might have reached a different result were we the trier of the facts. As we have shown, the verdict was not against the weight of the evidence.

We have considered defendant's other points but find them without merit.

Accordingly, defendant's motion for judgment n.o.v., or for a new trial, or for a reduction in the amount of the verdict is in all respects denied. The Clerk of the court is directed to enter judgment in accordance with the verdict of the jury.

So ordered.

Dated: New York, N. Y.
June 22, 1976

LLOYD F. MacMAHON
United States District Judge

CLERK'S OFFICE
United States District Court
FOR THE

Gatehouse
vs.
Cedar Computer Tech.
Civil Action No. 75-5095

There was entered on the docket 6-23, 1976
an order (~~judgment~~) Memorandum
& 44638

A. O. NO. 145 Raymond F. Burghardt, CLERK

MacMahon, J.

U.S. DISTRICT COURT FILED JUN 25 1976 S.D. OF N.Y.

266

JUDGMENT AND ORDER NO. 76,601 OF HON. LLOYD F. MACMAHON (Filed June 25, 1976)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIAN GATEFIELD

Plaintiff

-against-

ADVANCED COMPUTER TECHNIQUES CORPORATION

Defendant

75 Civil 5095 (LFM)

JUDGMENT #76,601

The issues in the above entitled action having been brought on regularly for trial, before the Honorable Lloyd F. MacMahon, United States District Judge, and a jury, on April 13 and 14, 1976, and the jury having returned a verdict in favor of the plaintiff in the amount of $10,115., and defendant having moved the Court under Rules 50 and 59, of the Federal Rules of Civil Procedure, and for judgment n.o.v. in its favor, and the Court thereafter on June 23, 1976, having handed down its memorandum opinion denying defendant's motion in all respects, and directing the Clerk to enter judgment in accordance with the verdict of the jury, it is,

ORDERED, ADJUDGED and DECREED: That plaintiff MARIAN GATEFIELD have judgment against defendant ADVANCED COMPUTER TECHNIQUES CORPORATION in the amount of $10,115.

Dated: New York, N.Y.
June 25, 1976

Raymond F. Burghardt
Clerk

DEFENDANT'S NOTICE OF APPEAL
(Filed July 23, 1976) (pp. 267a-269a)

United States District Court
Southern District of New York

Marian Gatefield,

Plaintiff,

v.

Advanced Computer Techniques Corporation,

Defendant.

75 Civ. 5095 (LFM)

Notice of Appeal

Notice is hereby given that Advanced Computer Techniques Corp., defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from a Judgement No. 76,601 entered on June 25, 1976, pursuant to the Memorandum-decision of Hon. Lloyd F. MacMahon, denying defendant's motion pursuant to the Rules 50 and 59 of the Federal Rules of Civil Procedure for a new trial and for judgment n.o.v., and the verdict of the jury returned on April 14, 1976, in the amount of $10,115.

Dated: New York, New York
July 20, 1976

Lewis & DeClemente, Esqs.
Attorneys for Defendant
757 Third Avenue
New York, New York 10017
(212) 421-8837

By _____
Paul Z. Lewis

To: Ralph R. Ferney, Esq.
Attorney for Plaintiff
Third Floor
299 Park Avenue
New York, New York 10017
(212) 688-5000

State of New York)
: ss.:
County of New York)

John Canigliabeing duly sworn, deposes and says, that deponent is not a party to the action, and is over 18 years of age.

That on the 23d day of July 1976 deponent served the within Notice of appeal on

Ralph Ferney, Esq.
299 Park Avenue
New York, N. Y. 10017

the address(es) designated by said attorney(s) for that purpose by depositing same enclosed in a postpaid properly addressed wrapper in a -- ~~post office~~ - official depositary under the exclusive care and custody of the United States Post Office department.

John Canigliá

Sworn to before me this 23
day of July 1976

Paul Z. Lewis
Notary Public, State of New York
No. 31-4526714
Qualified in New York County
Commission expires March 30, 1978

APPLICATION FOR APPROVAL & FILING OF SUPERSEDEAS BOND
(Filed July 23, 1976) **(pp. 270a-272a)**

United States District Court
Southern District of New York

Marian Gatefield, Plaintiff, v. Advanced Computer Techniques Corporation, Defendant.	75 Civ. 5095 (LFM) Application for Approval and Filing of Supersedeas Bond

Advanced Computer Techniques Corp., the defendant herein, having filed a Notice of Appeal to the United States Court of Appeals for the Second Circuit for the final judgment in this action entered on June 25, 1976, herewith submits to the court for its approval and for filing, a supersedeas bond, hereto attached, in the amount of $11,477.65, conditioned for the satisfaction of the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest

and damages as the Appellate Court may adjudge and award.

Dated: New York, New York
July 20, 1976

Lewis & DeClemente, Esqs.
Attorneys for Defendant
757 Third Avenue
New York, New York 10017
(212) 421-8837

By _____
Paul Z. Lewis

To: Ralph R. Ferney, Esq.
Attorney for Plaintiff
Third Floor
299 Park Avenue
New York, New York 10017
(212) 688-5000

State of New York)
: ss.:
County of New York)

John Caniglia being duly sworn, deposes and says, that deponent is not a party to the action, and is over 18 years of age.

That on the 23d day of July 1976 deponent served the within Application for Approval and Filing of Supersedeas Bond on

Ralph Ferney, Esq.
299 Park Avenue
New York, N. Y. 10017

the address(es) designated by said attorney(s) for that purpose by depositing same enclosed in a postpaid properly addressed wrapper in a -- ~~post office~~ official depositary under the exclusive care and custody of the United States Post Office department.

John Caniglia

Sworn to before me this 23
day of July 1976

Paul L. Lewis
Notary Public, State of New York
No. 31-4526714
Qualified in New York County
Commission expires March 30, 1978

STIPULATION AS TO RECORD ON APPEAL RE: EXHIBITS ATTACHED
(pp. 273a-296a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x Docket No. 76-7400

Marian Gatefield, 75 Civ. 5095

Plaintiff,

v.

Advanced Computer Techniques Corp.,

Defendant.

- -x

It is hereby stipulated and agreed by and between the parties hereto that the following trial exhibits are necessary for the determination of the within appeal, and are to be part of the record on appeal.

Plaintiff's Exhibits:

3 Plaintiff's employment contract with defendant

4 Letter dated June 2, 1975, by Charles Lecht to Marian Gatefield

5 Plaintiff's resume

Defendant's Exhibits:

A Letter dated June 1, 1975, from Marian Gatefield to Charles Lecht

F Defendant's telephone bill, including call of May 21, 1975, to Iran

G Summary Report of profits and losses for Advanced T/S Applications

H Expense reports for F. B. Timmons

I Salary sheet for Harvey Koeppel

J Salary sheet for Alex Bernstein

P Letter dated April 8, 1975, from Anne Tipton to John C. Elliott

Lewis & DeClemente, Esqs.
Attorneys for Advanced
Computer Techniques Corp.
757 Third Avenue
New York, New York 10017

By Herbert Klitzner
Herbert Klitzner

Ralph R. Ferney
Attorney for Marian Gatefield
299 Park Avenue
New York, New York 10017

PT Exh. 3

EMPLOYMENT CONTRACT made as of November 1, 1972 between ADVANCED COMPUTER TECHNIQUES CORPORATION, a New York corporation (hereinafter referred to as "Employer") and Marian Gatefield (hereinafter referred to as "Employee");

WITNESSETH it is agreed as follows:

1. Employment:

(a) Employer hereby employs Employee and Employee hereby accepts such employment, upon the terms and conditions hereinafter set forth.

(b) Employee shall perform such duties as may be assigned to him from time to time by Employer, shall devote his entire time, attention and energies to the business of the Employer and shall faithfully perform his duties in accordance with the directions of the Employer.

2. Term:

(a) Employee's employment hereunder shall commence on November 1, 1972 and shall continue until October 31, 1977 provided that after October 31, 1975 either party shall have the right to terminate this agreement on not less than sixty (60) days written notice.

(b) In lieu of any notice required to be given by Employer hereunder in the event it terminates the agreement, Employer shall have the right to pay Employee the salary he would receive during such notice period in one lump sum, in which event this agreement will immediately terminate.

(c) Notwithstanding anything hereinbefore contained Employer shall have the right to terminate this agreement immediately at any time for cause.

3. Compensation:

For the purpose of this paragraph 3 the term "Year of the Agreement" shall mean the twelve (12) month period commencing on November 1, 1972 and on each succeeding November 1 , during the term hereof. As full compensation for all services rendered by Employee hereunder, Employer shall pay Employee the following salary:

BEST COPY AVAILABLE

(a) From November 1, 1972 to October 31, 1973 Employee will be paid a salary at the rate of Nineteen Thousand Dollars ($19,000) per annum;

(b) During each succeeding year of the agreement commencing with November 1, 1973 Employee's annual rate of salary shall be increased by an additional $1,500, provided that after Employee's annual rate of salary is equal to $22,000, Employee and Employer shall negotiate any further increases in Employee's salary.

4. Benefit Plans of Employer:

Employee shall be entitled to participate in all group life insurance, major medical and other employee benefit plans established by Employer in accordance with the applicable provision of such plans.

5. Assignment:

Employer shall have the right to assign this agreement to any successor to its computer applications business, whether by purchase, merger or otherwise provided that such successor shall agree to be bound by all the terms hereof which are applicable to Employer.

6. Vacation:

During the first five (5) years of his employment by Employer, whether prior to or after the date of this agreement, Employee shall be entitled each year to a two (2) week vacation; thereafter, Employee shall be entitled to a three (3) week vacation. Such vacation may be taken whenever consistent with the performance of her duties hereunder.

7. Restrictive Covenant:

(a) Employee acknowledges that during the course of his employment he has and will become acquainted with the business of Employer, will have close contact with Employer's clients and their personnel and with the special requirements and programs of such clients. During the term of this agreement, and for a period of one (1) year thereafter, Employee shall not, directly or indirectly either as an individual, as an employee or member of a partnership, or as an employee, officer, director or stockholder of any corporation, solicit or accept, or advise anyone

else to solicit or accept, any business for computer application, computer software and related activities from any client, or from the personnel of any client, with whom Employee transacted any business during the time Employee was employed by Employer. All papers, memoranda, notes, reports, charts, programs, data, or other documents of any kind relating to the business of Employer or to the business of its clients shall be the sole and exclusive propert of Employer and shall be turned over to the Employer upon the termination of Employee's employment. Employee hereby acknowledges that the limitations as to time herein placed on his subsequent employment or association, and the limitations on the character or nature thereof, are reasonable and fair and will not prevent or materially impair his ability to earn a livelihood.

(b) During the term of this agreement and for the one (1) year period thereafter, Employee shall not offer employment to, or advise anyone else to offer employment to, any employee of Employer, or any employee of Employer who voluntarily leaves the employ of Employer during such period.

8. Notices:

Any notice required or permitted to be given under this agreement shall be sufficient if in writing and if sent by registered mail as follows:

If to Employer:

Advanced Computer Techniques Corporation
437 Madison Avenue
New York, New York 10022

If to Employee:

Miss Marian Gatefield
41 Central Park West
Apt. 11G
New York, N.Y. 10023

9. Inventions and Discoveries:

(a) Employee shall promptly make a written disclosure to Employer of each invention, discovery of improvement, whether patentable or not, (hereinafter referred to as the "Invention") conceived or reduced to writing by the Employee during the course of Employee's employment by Employer provided that the forgoing shall not apply to inventions, discoveries or improvements not relating to Employer's business and which Employee conceived during other than Employer's normal working hours. As to each such invention, Employee shall point out the features or concepts which the Employee believes to be new or different.

(b) Employee hereby assigns to Employer, its successors and assigns, any such invention, which shall become and remain Employer's property whether or not patent applications are filed thereon. Employee shall, upon Employer's request and at Employer's expense, cause patent applications to be filed thereon in countries selected by Employer, through solicitors designated by Employer and shall assign all such applications to Employer, its successors and assigns. Employee shall give Employer and its solicitors all reasonable assistance in connection with the preparation and prosecution of any such patent applications and shall cause to be executed all such assignments and other instruments and documents as Employer may consider necessary or appropriate to carry out the intent of this paragraph.

10. Waiver:

The failure of either party to insist, in any one or more instances upon performance of any of the terms and conditions of this contract shall not be construed as a waiver or a relinquishment of any right granted hereunder or of the future performance of any such term, covenant, or condition, but the obligations of either party with respect thereto shall continue in full force and effect.

11. Applicable Law:

This agreement shall be governed by and construed in accordance with the laws of the State of New York.

12. Entire Agreement:

This agreement contains the entire agreement of the parties with respect to the employment of Employee by Employer.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

ADVANCED COMPUTER TECHNIQUES CORPORATION

By Chris Precht

President

Marian Gatfield

Π Exh. 4 279a

ADVANCED COMPUTER TECHNIQUES CORPORATION

437 MADISON AVENUE / NEW YORK, NEW YORK 10022 / (212) 421-4688
cable address INTERACTCO

CHARLES P. LECHT

2nd June, 1975

Ms. Marian Gatefield
49 Courtlands
Maidenhead, Berks
England

Dear Marian:

In view of the events which transpired regarding your going on leave without my approval on 31st May, 1975, we have decided to terminate your employment with ACT. It is unfortunate that your termination materialized in this way; we cannot condone a staff member unilaterally deciding when and when not to take leave.

I have asked Jack Lowenthal to prepare a statement of your situation at the date of this letter of termination and will advise you as to any financial matters that may be outstanding between us. Additionally, we would appreciate your letting us know if there are any outstanding matters of which you are aware and of which we should be aware to handle the transition as someone else assumes your post.

In closing I am obligated to inform you that the agreement between you and this company precludes your consulting with clientele with whom you had contact while an employee of ACT for one year after the date of this letter either as a private consultant or as a member of another firm. We, quite naturally, expect you to honor this provision. Additionally, we would appreciate your mailing the company credit cards in your possession to Rosemary so that these may be destroyed.

Ms. Marian Gatefield 2nd June, 1975

ACT

I must tell you that it is with great personal unhappiness that I write this letter to you. I wish you well in whatever you may undertake in the future.

Sincerely,

Charles P. Lecht
President

CPL:rd

cc: 41 Central Park West
New York, New York 10023

O. H. Schachter

P.S. Your personal effects will be boxed to await your instructions regarding their disposition.

IT Edu.
5

MARIAN GATEFIELD
41 Central Park West
New York, New York 10023

EDUCATION

B.S., Mathematics and Physics
Portsmouth College of Advanced Technology, England

DATE OF BIRTH

March 22, 1943

EXPERIENCE SUMMARY

Director, World Trade Center Project
Senior Consultant -
Advanced Computer Techniques - U.S.A., Holland, France, Iran
March, 1969 - May, 1975

Senior Systems Analyst/Programmer
Computer Applications, Inc. - U.S.A.
October, 1966 - February, 1969

Programming Instructor
Honeywell, Inc. - England, Holland, Germany
November, 1964 - September, 1966

Computers

IBM - 360-30, 360-40, 360-50, 360-65, 370-155
Honeywell - 200, 1200, 2200, 8200, 516, 400, 800, 1800, 6000
Univac - 1108, 9400
PDP - 11

Programming Languages

COBOL, FORTRAN, BAL, EASY, EASYCODER, PL/1, SLEUTH,

ASSEMBLY LANGUAGES, RPG, IDS

Time-Sharing Systems

General Electric Company

EXPERIENCE RESUME

Managed the design phase of a real-time on-line Money Market trading system for a major bank.

Managed all World Trade Center associated projects, including the design and implementation of Interfile for the New York World Trade Center. Interfile is a world trade reference data information retrieval system resident on an international time-sharing system. Consulted with other World Trade Centers concerning their data processing needs and support requirements. Managed all World Trade Center tenant projects.

Acted as a consultant to Honeywell Iran in order to evaluate the data processing requirements of the Bureau of Budget and Planning, the Ministry of Economics, an Iranian Steel Mill, and various other Iranian banking and commercial establishments.

Designed a Volume Test Driver for LEXIS, a real-time on-line legal and tax accounting information retrieval system.

Designed a Functional Test Driver for the real-time, on-line NASDAQ stock quotation system.

Participated in the design and implementation of a Call Generator for the United Airlines' reservation system, using Univac 1108's.

Undertook a study of the current status and problem areas, both existing and potential, for American Can's on-line real-time order entry system.

Participated in the design and programming fo disc handling routines for an RPG compiler for the Univac 9400.

Designed an Operating Systems Design Course for Honeywell.

Undertook studies and wrote proposals for expansion of a Management Information System for a brokerage house; a Back Office System for a brokerage house; a simulator of the Honeywell 200 on the IBM 360; a payroll system for a textile company.

Participated in the design and programming of a payroll, pension and personnel system for an insurance company. Programs were written in COBOL for the IBM System/360 Model 65.

Participated in the design of a salesman's routing system and a promotional mailing selection system for a drug company. Programs were written in COBOL and BAL for the IBM System/360 Model 30, 40, 50.

EXPERIENCE RESUME (cont'd)

Instructed Honeywell and customer personnel in System Analysis and Design and the following languages:

FORTRAN for the H-200 series, H-400, H-800, H-1800
COBOL for the H 200 series, H-400, H-800, H-1800
EASYCODER for the H-200 series.
EASY for the H-400

Designed a Mail Order System for a book publisher. Wrote several programs for this system in COBOL for the H-200.

Assisted a railroad with the design and programming of FORTRAN Programs for a national freight car control system on the H-1800.

As a scientific advisor for Honeywell, aided the Civil Engineering Department of a local government with the design and programming of FORTRAN programs for bridge designs on the H-400.

Wrote the major program for a pension system.

PUBLICATIONS

Data Processing at the New York World Trade Center
World Traders Magazine - September, 1971

Interfile: How it Works
World Traders Magazine - April, 1973

Def. Exh. A

284a

June 1st 1975

Dear Jack,

I would appreciate it if you would arrange for my medical aswance to be continued during my abscence from ACT. Should my leave turn out to be permanent, I would like to continue my aswance privately if this is possible.

Thankyou very much

Yours sincerely,

Marian Gatfield

FIRST FOLD HERE

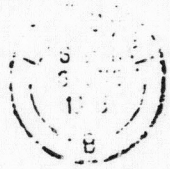
SENDER'S NAME AND ADDRESS (PLEASE SHOW YOUR POSTCODE)

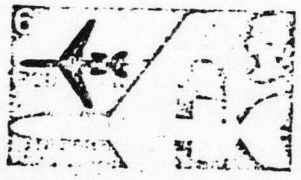
Mahan Gatefield
49 COURTLANDS
MAIDENHEAD
BERKS
ENGLAND

AN AIR LETTER SHOULD
NOT CONTAIN ANY ENCLOSURE;
IF IT DOES IT MAY BE SURCHARGED
OR SENT BY ORDINARY MAIL

SECOND FOLD HERE

BY AIR MAIL
AIR LETTER
PAR AVION AEROGRAMME





Mr. J. Lowenthal
Advanced Computer
Techniques 21st Flr.
437 Madison Ave
New York New York
U.S.A. 10022

TO OPEN SLIT HERE

67 421 4688 ? 421 4688 —— !-7517

Def. Exh. F

521	CHINA SPG	TEX	817	836	4645	84	317021
521	IRAN					10200	3318 7
522	WESTFIELD	NJ	201	233	9200	36	209070
522	JERSEYCITY	NJ	201	420	1258	22	209090
522	LONDON	ONT	519	433	6811	100	210380
522	HUNTINGTON	NY	516	549	7018	56	110470
522	MORRISTOWN	NJ	201	455	9733	43	211090
522	LONDON	ONT	519	433	6811	55	111210
522	MADISON	NJ	201	966	3119	29	111240
522	DUMONT	NJ	201	384	4400	21	111330
522	ITALY					1200	211 7
522	HACKENSACK	NJ	201	343	6867	21	112380
522	POMPANOSCH	FLA	305	971	6666	88	212460
522	CLEVELAND	OHIO	216	241	0468	48	112570
522	BRIDGEPORT	CONN	203	378	6361	59	213240

E 1
08/76 ADVANCED COMPUTER TECHNIQUES - SUMMARY REPORT

ARCED T/S APPLICATIONS P/L REPORT BASED ON 1975 ACTUAL

	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	TOT
REV'S - CONSULTING	23346	19415	16030	14803	11422	10950	11922	16597	16134	22747	14546	0	177972
REV'S - PACKAGES	0	0	0	0	0	0	0	0	0	0	0	0	0
REV'S - SERVICE BUREAU	0	0	0	0	0	0	2838	3408	1344	710	2432	0	10732
REV'S - REVENUE MISC	0	0	0	0	0	0	0	0	0	0	0	0	0
REV'S - INTERDIVISIONAL	2574	392	27	0	0	861	485	216	55	360	3199	0	8169
REV'S - MISCELLANEOUS	0	0	0	0	0	0	0	0	0	0	0	0	0
*** TOTAL REV'S ***	25920	19807	16117	14803	11422	11811	15245	20221	17533	23817	20177	0	196873
*** TOTAL PERSONNEL ***	6	6	6	6	6	6	6	6	8	7	7	0	0
*** TOTAL SALARY EXP ***	8675	7243	7249	6441	7138	7650	7786	7367	8931	8190	8263	0	84923
EMPLOYEE BENEFITS	868	724	725	644	712	765	779	737	893	819	826	0	8492
INTER DIVISIONAL EXPENSE	751	-1433	-10	-530	0	-314	1015	54	0	0	0	0	-467
CORPORATE EXPENSE	0	0	0	0	-188	0	0	0	0	0	0	0	-188
LEGAL AND ACCOUNTING	0	0	0	0	0	0	0	0	0	0	0	0	0
PURCH SERVICES - TECH	0	0	0	0	0	0	0	0	0	0	1485	0	1485
PURCH SERVICES - COMPUTER	2145	2145	1251	1877	1847	1851	1847	2559	2025	1847	1922	0	21316
PURCH SERVICES - REVENUE	0	0	20	0	0	0	0	0	0	0	0	0	20
PURCH SERVICES - OFFICE	3	0	0	38	1040	223	231	1087	225	139	400	0	3345
PURCH SERVICES - DELIVERY	105	74	92	144	285	115	57	179	137	73	110	0	1371
PURCH SERVICES - SUPPORT	0	0	0	0	0	0	0	0	0	0	0	0	0
*** PURCH SERVICES ***	2252	2219	1363	2059	3172	2189	2135	3825	2387	2059	3917	0	27587
EQUIP - COMPUTERS	0	0	386	31	0	0	0	0	0	98	0	0	515
EQUIP-REVENUE	0	0	0	0	0	0	0	0	0	0	0	0	0
EQUIP-TERMINALS	486	487	487	487	487	487	487	487	487	487	487	0	5356
EQUIP-OFFICE	0	0	0	0	0	209	230	0	0	0	0	0	439
*** EQUIPMENT ***	486	487	873	518	487	696	717	487	487	585	487	0	6310
SUPPLIES-COMPUTER	152	421	0	72	0	0	252	128	0	373	607	0	2010
SUPPLIES-OFFICE	385	0	307	-17	270	50	0	81	0	0	27	0	1103
*** SUPPLIES ***	537	421	307	55	270	50	252	209	0	373	634	0	3113

20 T/S APPLICATIONS P/L REPORT BASED ON 1975 ACTUAL

	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	TOT
> EXP- T/L	0	0	0	0	63	137	94	0	0	0	0	0	294
> EXP- RELOCATION	0	0	0	0	0	0	0	0	0	0	0	0	0
> EXP- PROMOTIONAL	0	456	516	0	0	0	0	0	0	0	0	0	972
> EXP- PROJECTS	54	0	161	0	0	102	68	25	609	246	277	0	1542
# EMPLOYEE EXPENSES +++	54	456	677	0	63	239	162	25	609	246	277	0	2808
TO EXP-LEASE/DEPR	0	0	0	0	0	0	0	0	0	0	0	0	0
TO EXP-MAINTENANCE	0	0	0	0	0	0	0	0	0	0	0	0	0
TO EXP-INSURANCE	0	0	0	0	0	0	0	0	0	0	0	0	0
# AUTO EXPENSES +++	0	0	0	0	0	0	0	0	0	0	0	0	0
NT	0	0	0	0	0	0	0	0	0	0	0	0	0
ILITIES	0	0	0	0	0	0	0	0	0	0	0	0	0
ILDING MAINTENANCE	0	0	0	0	0	0	0	0	0	0	0	0	0
OK DUES SUBSCRIPTIONS	0	86	0	12	0	0	0	0	0	18	0	0	116
VERTISING/PROMOTION	0	197	0	0	14	0	0	14	0	0	0	0	225
ENCY FEES	2250	0	0	0	0	0	0	0	0	0	0	0	2250
STAGE	0	0	0	0	0	0	0	0	0	0	0	0	0
LE/TELEX/TELEGRAPH	0	0	0	0	0	66	0	0	0	0	0	0	66
POX	0	0	0	0	0	0	0	0	0	0	0	0	0
SURANCE	0	0	0	0	0	0	0	0	0	0	0	0	0
SCELLANEOUS	0	0	0	0	0	0	0	0	400	0	0	0	400
TEREST EXPENSE	0	0	0	0	0	0	0	0	0	0	0	0	0
ORTIZATION	0	0	0	0	0	0	0	0	0	0	0	0	0
PECIATION	0	0	0	0	0	0	0	0	0	0	0	0	0
MMISSIONS	871	296	248	0	310	92	93	63	158	46	0	0	2127
SCELLANEOUS TAXES	0	0	0	0	0	0	0	0	0	0	0	0	0
ERHEAD-LOCATION	1508	1508	1508	1508	1508	1508	1940	1940	1940	1940	1940	0	18748
ERHEAD-CORPORATE	2972	2972	2972	2972	2972	2972	2404	2404	2404	2404	2404	0	29852
TRA ORGANIZATIONAL	0	0	0	0	0	0	0	0	0	0	0	0	0
RECT CPL	0	0	0	0	0	0	0	0	0	0	0	0	0
RECT ONS	0	0	0	0	0	0	0	0	0	0	0	0	0
RECT OVERSEAS TRAVEL	0	0	0	0	0	0	0	0	0	0	0	0	0
AL RELOCATION	0	0	0	0	0	0	0	0	0	0	0	0	0
SERVE	0	0	0	0	0	0	0	0	0	0	0	0	0
* OVERHEAD CHARGES +++	4480	4480	4480	4480	4480	4480	4344	4344	4344	4344	4344	0	48600
# TOTAL EXPENSES +++	21324	15126	15912	13679	16448	15913	17288	17185	18219	16680	18748	0	196362
GROSS PROFIT	4696	4681	205	1124	-5026	-4102	-3043	2096	-686	7137	1429	0	10511

288

- Def. Exh. H

ADVANCED COMPUTER TECNHIQUES CORPORATION
EXPENSE REPORT

289a
№ 0000

E: J. B. TIMMONS ..... BILLABLE – YES ☐ NO ☒ DATE SUBMITTED: .....

NT & PROJECT . REPRESENT. ACT. AT WORLD TRADE CONFERENCE .... OFFICE: .....

VEL FROM: .. NEW YORK ..... TO: ... ABIDJAN, CÔTE D'IVOIRE .... ~~AND RETURN~~

E	6/23 MON	6/24 TUE	6/25 WED	6/26 THU	6/27 FRI	6/28 SAT	6/29 SUN	AMOUNT CHARGED	AMT NOT CHARG
L CHARGED T* HOTEL IVOIRE					→		12000F	12000F	
L NOT GED									
S CHARGED T*						17,675F		17.675F	
S NOT GED						$10.00	$6.25		$16.25
EL CHARGED T*				$1143.10				$1143.10	
EL NOT GED									
ENTAL GED TO ACT*									
EXPENSE ($.10 x No. of Miles)									
& PARKING									
HONE									
/ LIMOUSINE	$6.00	$4.00		$23.00 (RT) $20.00 (GENEVA)			$15.70		$65.70
RY									
BAG HANDLING				$2.00	$4.00		$4.73		$10.73
** PASSPORT PICTURES	$10.80								$10.80
PASSPORT		$13.00							$13.00
IMMUNIZATION SHOTS	$18.00			$22.50					$40.50
EXCESS BAGGAGE				$62.44					$62.44
	$34.80	$17.00		$1253.04	$24.00	17675F	12000F	$1143.10	$222.47

NY CHARGES INCLUDE ENTERTAINMENT OR EXPENSES
NOTHER PERSON, PLEASE COMPLETE BELOW

ADVANCE DATE $10.00 $26.68 CK No. 29,675F $

NAME OF PERSON, COMPANY AND TYPE OF EXPENSE	$ AMOUNT
Refreshments & Dinner: H. BOKET-ABIDJAN, C. BIOHSTEDT - SWEDEN, R. HAGENAAR - HOLLAND, T. KARNEY - NEW YORK	17.675F

AMT DUE EMPLOYEE
DATE: CK. NO.

AMOUNT DUE ACT

TOTAL EXPENSES CH'D & NOT CH'D. $1365.52 / 29,675F ≈ $162.16

EMPLOYEE SIGNATURE: J. B. Timmons

APPROVED BY:

PONSORED CREDIT CARDS OR BILLED DIRECTLY TO ACT.

SE EXPLAIN

ADVANCED COMPUTER TECNHIQUES CORPORATION
EXPENSE REPORT

290a

№ 6003

: J. B. TIMMONS ..... BILLABLE – YES ☐ NO ☒ DATE SUBMITTED: .....

T & PROJECT ... WTCA ... (CONT) ..... OFFICE: .....

L FROM: ABIDJAN ..... TO: KINSHASA, ~~ZAIRE~~ ..... ~~AND~~ RETURN

	6/30 MON	7/1 TUE	7/2 WED	7/3 THU	7/4 FRI	7/5 SAT	7/6 SUN	AMOUNT CHARGED	AMT. NOT CHARGED
CHARGED * INTER CONTINENTAL	—	→	$165.00	—	—	$37.00	$37.00	$239.00	
NOT D									
CHARGED						14.40	6.60	$ 21.00	
NOT D	$28.50	12.60	19.70	8.50	17.20	16.70	12.50		$115.70
CHARGED				$252.00	*			$252.00	
NOT D	$126.10	(ABIDJAN - KINSHASA - REIMBURSE W/TC ZAIRE)							$126.10
TAL D TO ACT*									
PENSE ($.10 x No. of Miles)									
PARKING									
NE							39.00		$39.00
			14.75						$14.75
			5.00			17.00			$22.00
E REGISTRATION	185.00							$185.00	
E: $252 ENCL TRANSPORTATION, HOTEL & MEALS FOR TRIP TO GOMA, ZAIRE (7/3 - 7/5)									
	$339.60	$12.60	$204.45	$260.50	$17.20	$85.10	$95.10	647.00	$317.55

Y CHARGES INCLUDE ENTERTAINMENT OR EXPENSES OTHER PERSON, PLEASE COMPLETE BELOW

ADVANCE
DATE CK No. $

NAME OF PERSON, COMPANY AND TYPE OF EXPENSE	$ AMOUNT
Refreshments for members attending WTCA - list attached	28.50
	10.60
	17.70
	8.50
	17.20
	16.70

AM'T DUE EMPLOYEE
DATE: CK. NO.

AMOUNT DUE ACT

TOTAL EXPENSES CH'D & NOT CH'D. $ 1014.55

EMPLOYEE SIGNATURE: J. B. Timmons

APPROVED BY: ✓

ONSORED CREDIT CARDS OR BILLED DIRECTLY TO ACT.

EXPLAIN

ADVANCED COMPUTER TECNHIQUES CORPORATION 291a
EXPENSE REPORT № 5998

ME: J.B. TIMMONS ..... BILLABLE – YES ☐ NO ☒ DATE SUBMITTED: .....
ENT & PROJECT .... W.T.C.A. (CONT.) ..... OFFICE: .....
VEL FROM: KINSHASA ..... TO: MILAN – NEW YORK ..... ~~AND RETURN~~

E	7/7	7/8						AMOUNT CHARGED	AMT NOT CHARG
	MON	TUE	WED	THU	FRI	SAT	SUN		
EL CHARGED CT*	$18.50	16 00 LIRE ($ 26.45)						$44.95	
EL NOT RGED									
LS CHARGED CT*	$10.60							$10.60	
LS NOT GED	$22.80	$3.25							26.0
EL CHARGED T*									
EL NOT GED									
ENTAL GED TO ACT*									
EXPENSE ($.10 x No. of Miles)									
& PARKING									
HONE	$98.80	$12.60						$111.40	
		$8.70							$8.70
RY	$19.36							$19.36	
	$4.00	$1.00							$5.12
**									
	$174.06	52.00						$186.31	$39.75

NY CHARGES INCLUDE ENTERTAINMENT OR EXPENSES
ANOTHER PERSON, PLEASE COMPLETE BELOW

ADVANCE
DATE CK No. $

NAME OF PERSON, COMPANY AND TYPE OF EXPENSE	$ AMOUNT
Luncheon with H. Yoroi & Executives of his staff (W.T.C. Future)	$22.80

AM'T DUE EMPLOYEE
DATE: CK. NO.

AMOUNT DUE ACT

TOTAL EXPENSES CH'D & NOT CH'D. $ 226.60

EMPLOYEE SIGNATURE: J.B. Timmons

APPROVED BY:

GRAND TOTAL $2768.83

PONSORED CREDIT CARDS OR BILLED DIRECTLY TO ACT.

E EXPLAIN

Employee Name: Koeppel, R. Harvey

292a

Employee Number: 1-500-3730

Soc. Sec. No.: 085-16-2327

Birthdate: 11-27-49

Empl. Commenced: 3-27-72

Address: 160 E. 48 St., NYC 10022 Phone: 371-8445

Address: Phone

Address: Phone

Dates	Hourly Rate	Daily	Weekly	Semi Monthly	Annual Salary
6-16 74	8.41	67.30	336.53	729.16	17,500
4-1-75	9.38	75.00	375.00	812.50	19,500
→ 9/1/77		86.54	432.69	937.50	22500
1-1-80 to 9/1/77	12.9808	103.85	519.23	1125.00	27,000.-
2-1-76					

Insurance	Date Eligible	Date Joined	Date Withdrawn	Employment Termination
Life				
Medical-Self				
-Dep.				
Maj. Med. -Self				
-Dep.				

Federal Witholding:				
	Exemptions Claimed	5-1		
	Add'l Amount Withheld			

Other Information

8/31/77 - 1/1/80 Salary

New York, N. Y. 10017

Edu.

293a

Employee Number: 1131

Birthdate: 12/14/30

Empl. Commenced: 10/15/75

Name: Bernstein, Alex

Address: 123 Beach Ave., Larchmont N.Y. 10538 (914) Phone 834-1179

Address: Phone

Address: Phone

Dates	Hourly Rate	Daily	Weekly	Semi Monthly	Annual Salary
10/15/75			442.31	958.33	23000
12/1/75	12.0193	96.15	480.77	1041.67	25000 -

Insurance	Date Eligible	Date Joined	Date Withdrawn	Employment Termination
Life	✓ 10/15/75			
Medical-Self	✓ 10/15/75			
Dep.	✓ 3.6.8			
Maj. Med. -Self	✓ 10/15/75			
Dep.	✓ 3.6.8			

Federal Witholding:	Exemptions Claimed	DX 6		
	Add'l Amount Withheld			

Other Information

NYC - Non-Resident

Dept - 150

Def. Exh P 294a

F 4

ADVANCED COMPUTER TECHNIQUES CORPORATION

437 MADISON AVENUE / NEW YORK, NEW YORK 10022 / (212) 421-4688

cable address INTERACTCO

April 8, 1975

Mr. John C. Elliott
First National City Bank
810 Seventh Avenue
New York, New York

Dear Mr. Elliott:

Per your request we have attached an amended COINS Design schedule to reflect the following:

a. The file design task has been increased to include a file design for those data elements in common with CCM and to create a design which may or may not make use of TDS/IDS.

b. An equipment evaluation and selection task has been added to evaluate the possible use of a mini computer system for the COINS application.

c. A task has been added to develop the functional specifications for any system oriented (e.g. data base manager) modules required in the event a mini-system is selected.

To compensate for these additional and expanded tasks, it has been necessary for ACT to:

a. Add additional man-weeks to the effort, and

b. Reschedule the level of effort to be allocated to the application program design.

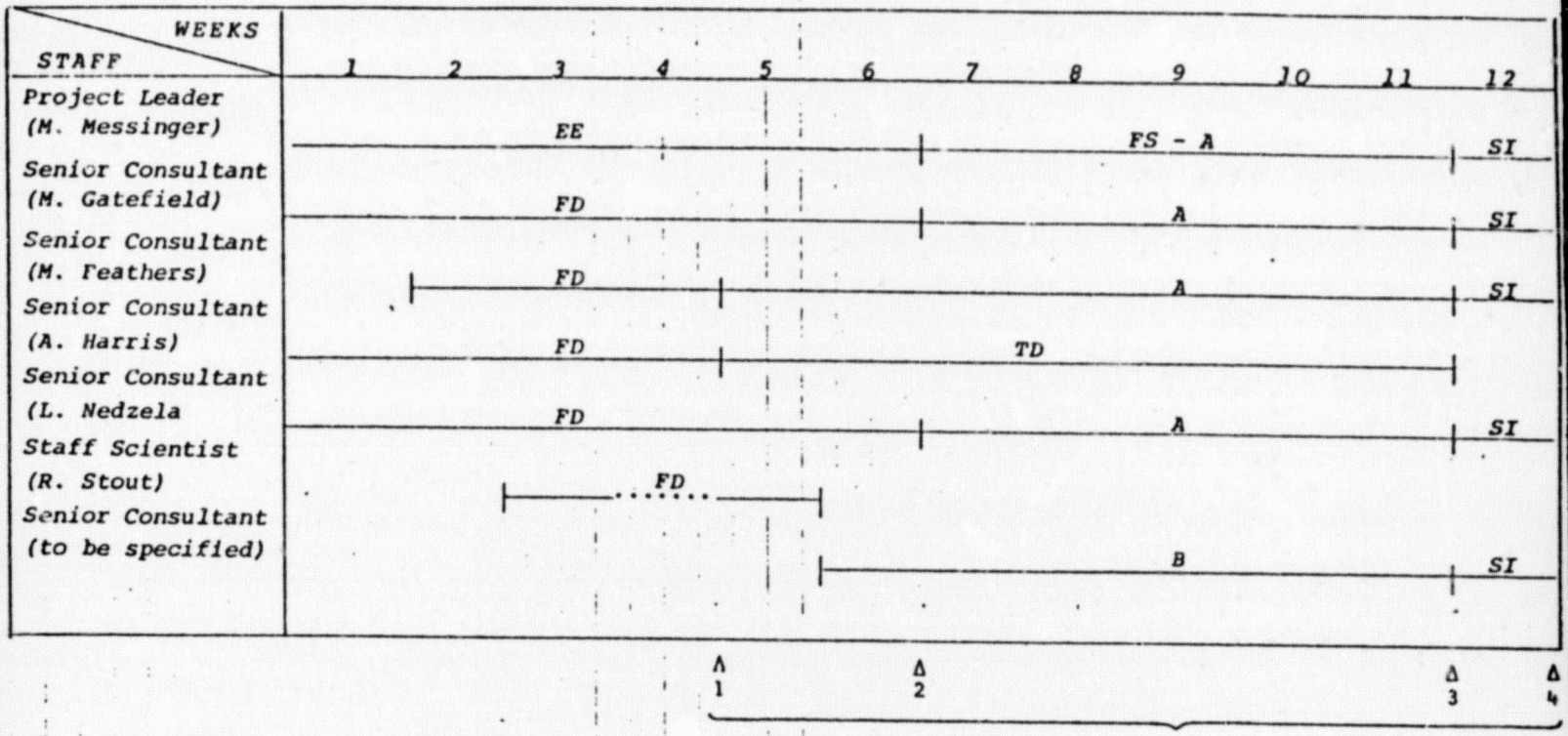
The net result of these changes is an <u>increase</u> of allocated effort of over eight man-weeks.

Sincerely,

Anna F. Tipton
General Manager
New York Office

AFT/sf
att:

GOING PROJECT SCHEDULE



LEGEND

A	APPLICATION PROGRAM DESIGN
B	BATCH/OFF-LINE PROGRAM DESIGN
FD	FILE DESIGN
FS	FUNCTIONAL SPECIFICATIONS OF SYSTEM MODULES REQUIRED IF A MINI-SYSTEM IS SELECTED.
SI	SYSTEM INTEGRATION
TD	TERMINAL SOFTWARE DESIGN

DESCRIPTION OF DELIVERABLES

1. At the end of the 4th week, ACT will give a formal presentation on the file design approach. The basic decisions as to file content and access method will have been made and will be presented but the documentation will not be available until the end of the 6th week.

2. At the end of the 6th week, ACT will deliver:

   a) File Design Specifications showing all data elements and access methods.

   b) Preliminary system loading calculations which include:

      - COINS transaction rates,
      - COINS disk access requirements,
      - CCM loading, by COINS transaction type, created by the COINS system, and
      - MD and MM transaction rates.

   c) The equipment evaluation and selection document which will include all considerations and calculations entering the selection process.

3. At the end of the 11th week, ACT will deliver the Terminal Software Specification.

4. At the end of the 12th week, ACT will deliver:

   a) Functional Specifications for any required system modules (e.g., - data base manager) in the event a mini system is selected.

   b) Application Program designs, and

   c) Batch/Off-line program designs.

SUPPLEMENTAL STIPULATION AS TO RECORD ON APPEAL RE: ADDITIONAL EXHIBITS ATTACHED Filed (pp. 297a-307a) 10/20/76 USDC

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-7400

Civ. No. 75-5095 (LFM)

MARIAN GATEFIELD,

Plaintiff-Appellee

vs.

ADVANCED COMPUTER TECHNIQUES CORP.

Defendant-Appellant.

SUPPLEMENTAL STIPULATION AS TO RECORD ON APPEAL

IT IS HEREBY stipulated and agreed by and between the parties hereto, that the following additional exhibits are necessary for the determination of the within appeal and are to be part of the record on appeal.

PLAINTIFF'S EXHIBITS

Exhibit 6 - Plaintiff's expense report.

Exhibit 7 - Plaintiff's list of expenses.

DEFENDANT'S EXHIBITS

Exhibit W - Letter dated May 10, 1976 from Paul Z. Lewis, Esq. to Hon. Lloyd F. MacMahon.

Exhibit X - Letter dated May 6, 1976 from Louise Doctor of British Airways to Herbert Klitzner, Esq. with attached copy of British Airways Ticket No. 1 125 4202452651 2.

Exhibit Y - Letter dated April 26, 1976 from Louise Doctor of British Airways to Herbert Klitzner, Esq. with attachment of telex to London.

Exhibit Z - Letter dated April 14, 1976 from Louise Doctor to Lewis & DeClemente

It is further stipulated and agreed that defendant's exhibits W, X,Y & Z concerning matters discovered after trial

are relevant only to the issue of defendant's right to a new trial.

Lewis & DeClemente, Esquires
Attorneys for Advanced Computer
Techniques Corp.
757 Third Avenue
New York, New York 10017

By: HERBERT KLITZNER

Ralph R. Ferney, Esq.
Attorney for Marian Gatefield
299 Park Avenue
New York, New York 10017

By: Ralph R. Ferney
RALPH R. FERNEY

C.P.

May 10, 1976

Hon. Lloyd F. MacMahon
United States District Judge
United States Courthouse
Foley Square
New York, New York 10007

Re: Gatefield v. Advanced Computer Techniques Corp.
75 Civ. 5095 (LFM)

Dear Judge MacMahon:

Enclosed herewith is a letter dated May 6, 1976 from Ms. Doctor of British Airways, enclosing an uplifted flight coupon for Miss Gatefield's flight to London on June 3, 1975. Prior to, or during the trial, we were physically unable to obtain a confirmation that Miss Gatefield's flight was on June 3, 1975, until Ms. Doctor transmitted this letter.

As your Honor will recall, discovery had not commenced at the time of the pre-trial conference on March 15, 1976. However, depositions had been scheduled and the depositinn of Miss Gatefield took place on March 31, 1976, at which time, we were first informed that Miss Gatefield had no written evidence that she knew about to indicate when she flew to London. She said that she would try to locate additional documentation and would report back. At the deposition of Oscar Schachter, an

ACT vice president, on April 7, 1976, which she attended, she furnished a copy of the ticket which had been originally purchased by her sister, she said, on March 17, but it did not have a date on it.

In the following days, we contacted British Airways to see whether they had such documentation, and on April 12, 1976, served them with a subpoena (attached hereto). British Airways indicated that they could not obtain the information prior to the trial, but after the trial was completed and a motion for new trial was made we continued to pursue this matter, especially in light of Miss Donaldson's unrebutted testimony that she had spoken to Miss Gatefield on the evening of June 2, 1975 to advise her of Mr. Lecht's letter.

The letter from Ms. Doctor of April 26, 1976, and the letter we received this week from Ms. Doctor dated May 6, 1976, show the efforts that British Airways made to identify which trip she traveled on. It has now been established that she left on June 3, 1975 on Flight BA-590.

In her testimony on page 36, line 10, Miss Gatefield indicated that she left on June 2, 1975. That testimony is inaccurate.

This evidence further demonstrates that Miss Gatefield was unquestionably aware of ACT's insistence that she not leave on leave of absence at that time. It shows that, reading Miss Gatefield's testimony in the most favorable light to her, she still had a full day to consider the consequences of her actions before she boarded the plane for England, and that her claimed shock at receipt of Mr. Lecht's letter was false.

We furnish this information to the Court for its benefit in determining defendant's motions, and respectfully request that if your Honor's determinations

are in any way controlled by this date of departure, that this newly discovered evidence be considered.

Respectfully yours,

Paul Z. Lewis
Attorney for Defendant
Advanced Computer
Techniques Corp.

PZL/ld
Enclosure
cc: Ralph R. Ferney, Esq.

303a

British airways

245 Park Avenue
New York, N. Y. 10017
Telephone: 983-3113

May 6, 1976

Herbert Klitzner, Esq.
Lewis & DeClemente
508 45 Street
Union City, New Jersey 07087

Re: Gatefield v. Advanced Computer Techniques

Dear Mr. Klitzner:

Enclosed please find a copy of Miss M. Gatefield's uplifted flight coupon for British Airways' flight 590 of June 3, 1975. Although the date and flight number are not entered on the coupon, I am informed that our London office holds such coupons according to this information, and had Miss Gatefield not travelled on the flight specified, i.e., BA 590/03 June 1975, they would have been unable to retrieve the used coupon.

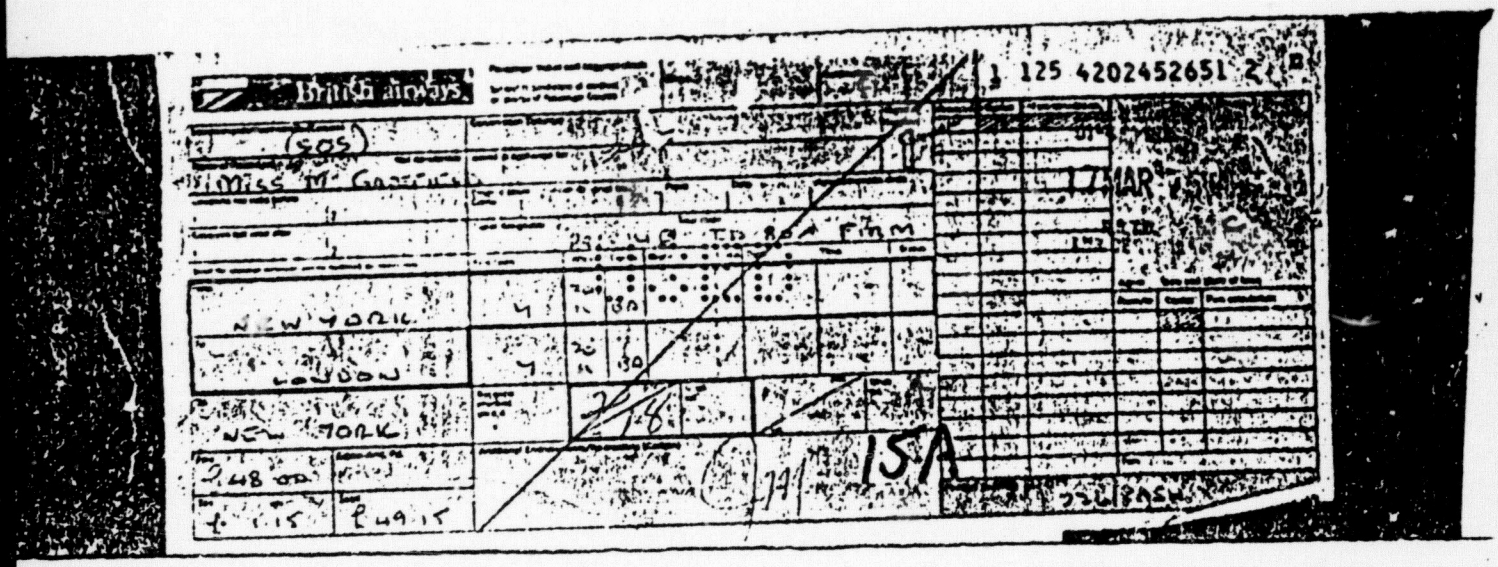
British Airways considers that it has now complied with your subpoena in all respects and that it is under no further obligation to provide additional information in this matter.

Very truly yours,

Louise Doctor
Paralegal Assistant

Enclosure

Exh. X


British airways
125 4202452651
(SOS)
Miss M Gaston
17MAR
NEW YORK
LONDON
NEW YORK
15A

British airways

305a

245 Park Avenue
New York, N. Y. 10017
Telephone: 983-3113

April 26, 1976

Herbert Klitzner, Esq.
Lewis & DeClemente
757 Third Avenue
New York, New York 10017

Re: Gatefield v. Advanced Computer Techniques

Dear Mr. Klitzner:

Pursuant to our telephone conversation this afternoon, enclosed please find a copy of our telex to London requesting information on possible travel by Ms. Gatefield on June 1, 2 or 3, 1975, and the Passenger Name Record showing all standby passengers accepted for boarding on flight BA590/3 June 1975, New York-London.

I have asked our Reservations Officer to request a copy of the uplifted ticket which would show Ms. Gatefield actually boarded the flight in question, but am informed that this may take "some time" -- possibly more than I indicated to you on the telephone. We will however try our best to get the ticket copy for you, and I will be in touch as soon as we have some answer from London.

Very truly yours,

Louise Doctor

Louise Doctor
Paralegal Assistant

Enclosures

Exh. Y

5- STF NYCIYPD03JUN
5- ATF NYCIYPD03JUN

1 BA0590Y 3JUN JFKLHR U SB 3 1000 2150
ORIGIN NYC/BA/IY 3JUN 1458
H SC- BA0590Y 3JUN JFKLHR SB/XK 3 1000 2150
RCVD- NYC/PD/IY 3JUN 1501

Louise Apparently travelled as a standby on BA590/3 June 1975 to London. VG

NNNN
QU LONRZBA
.LHRRMBA 201932

RMKS- NYCBARJD201420
2. NEED RECORD DETAILS
3. FLIGHT UNKNOWN 1 2 OF 3JUN 1975 NYCLON
4. PSGR GATEFIELD
5. PSE FORWARD DETAILS SOONEST TO FRANK GILROY 245 PARK
6. AVE 28TH FLOOR NYC DUE NEEDED TO ANSWER FEDERAL COURT
7. SUBPOENA FOR TRIAL CURRENTLY IN PROGRESS . THANX
=

201932 OEI 197
OEH 312

306a

307a

British airways

245 Park Avenue
New York, N. Y. 10017
Telephone: 983-3113

April 14, 1976

Lewis & DeClemente
757 Third Avenue
New York, New York 10017

Attn: Mr. Klitzner

Re: Gatefield v. Advanced Computer Techniques

Dear Sirs:

This will confirm my telephone conversation with your office yesterday, April 13, 1976, with respect to the subpoena issued on behalf of your client to British Airways for production of information regarding British Airways' rules and policies for discounted travel by employees and their relatives, and tickets or other evidence of travel by Marian Gatefield on or about May 29, 1975 through June 15, 1975.

We have supplied you with a copy of our rules for discounted travel, but the information pertaining to Ms. Gatefield's alleged travel is held in our London office and would take one to two weeks to obtain. Unless I hear to the contrary from you, I will assume that this will be too late for use at trial and we will be excused from producing same.

Very truly yours,

Louise Doctor
Paralegal Assistant

A 202 Affidavit of Personal Service of Papers
UNITED STATES COURT OF APPEALS
FOR THE SECOND D CIRCUIT

LUTZ APPELLATE PRINTERS, INC.

Index No.

MARIAN GATEFIELD,
Plaintiff - Appellee,
- against -
ADVANCED COMPUTER TECHNIQUES, CORP.,
Defendant- Appellant.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, Reuben A. Shearer *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 211 West 144th Street, New York, New York 10030

That on the 26th *day of* October *19* 76 *at* 299 Park Avenue, New York, New York 10017

deponent served the annexed Appendix *upon* Ralph R. Ferney

the Attorney *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein.*

Sworn to before me, this 26th *day of* October *19* 76

Beth A. Hirsh

BETH A. HIRSH
NOTARY PUBLIC, State of New York
No. 41-4623156
Qualified in Queens County
Commission Expires March 30, 1978

Reuben Shearer

Reuben Shearer